(28,636)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 681.

CITY OF PADUCAH; FREDERICK W. KATTERJOHN, MAYOR; WILLIAM V. EATON, COMMISSIONER OF PUBLIC SAFETY, ET AL., APPELLANTS,

vs.

PADUCAH RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 16, 1922.

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I *Citation.*

WESTERN DISTRICT OF KENTUCKY,
Sixth Judicial Circuit,
United States of America, ss:

To the Paducah Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court, to be holden at the City of Washington, in the District of Columbia, on the 17th day of January, 1922, next, pursuant to an appeal allowed by the District Court of the United States for the Western District of Kentucky, at Paducah, wherein the City of Paducah, a municipal corporation of Kentucky, and Frederick W. Katterjohn, Mayor of Paducah, William V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, Richard Wynn Tully, Commissioner of Public Finance, James M. Eaker, Commissioner of Public Works, are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said Appellants as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this the 19th day of December, in the year of our Lord One Thousand Nine Hundred Twenty-one, and of the Independence of the United States of America the one hundred and forty-sixth.

WALTER EVANS,
Judge.

Service Accepted December 20, 1921.
PADUCAH RAILWAY COMPANY,
By WHEELER & HUGHES,
Attys.

II The following is the petition of defendant for appeal, filed December 8th, 1921.

District Court of the United States for the Western District of Kentucky, at Paducah.

The Bill of Complaint of

THE PADUCAH RAILWAY COMPANY, a Corporation Organized by and Existing under the Laws of the State of Kentucky, with Its Principal Office or Place of Business at Paducah, Complainant,

vs.

CITY OF PADUCAH, a Municipal Corporation of Kentucky, and Frederick W. Katterjohn, Mayor of Paducah; William V. Eaton, Commissioner of Public Safety; Michael Williams, Commissioner of Public Property; Wynn Tully, Commissioner of Public Finance, and Jas. W. Eaker, Commissioner of Public Works, Composing the Mayor and Board of Commissioners of the City of Paducah, Defendants.

The above named defendants, City of Paducah, a municipal Corporation of Kentucky, and Frederick W. Katterjohn, Mayor of Paducah, Wm. V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, Wynn Tully, Commissioner of Public Finance and Jas. W. Eaker, Commissioner of Public Works, composing the Mayor and Board of Commissioners of the City of Paducah, conceiving themselves aggrieved by the order entered on June 25th, 1921, in the above entitled proceedings, do hereby appeal from said order to the Supreme Court of the United States, and they pray that their appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

ROSCOE REED,
Attorney for Defendants and Appellants, City of Paducah, a Corporation of Kentucky; F. W. Katterjohn, Mayor; Wm. V. Eaton, Michael Williams, Wynn Tully, and Jas. E. Ecker, Commissioners.

III

1009 City Nat'l Bank Bldg., Paducah, Kentucky.

a *Transcript of Record in the District Court of the United States for the Western District of Kentucky, Paducah Division, Sixth Circuit.*

In Equity.

No. 11.

THE PADUCAH RAILWAY COMPANY, a Corporation Organized by and Existing under the Laws of the State of Kentucky, with its Principal Office and Place of Business at Paducah, Complainant,

vs.

CITY OF PADUCAH, a Municipal Corporation of Kentucky, and FREDerick W. Katterjohn, Mayor of Paducah, William V. Eaton, Commissioner of Public Safety; Michael Williams, Commissioner of Public Property; Richard Wynn Tully, Commissioner of Public Finance; James M. Eaker, Commissioner of Public Works, Composing the Mayor and Board of Commissioners of the City of Paducah, Defendants.

1 The following is the bill in equity, filed September 28th, 1920.

In the District Court of the United States of the Western District of Kentucky, at Paducah.

The Bill of Complaint of

THE PADUCAH RAILWAY COMPANY, a Corporation Organized by and Existing under the Laws of the State of Kentucky, with its Principal Office and Place of Business at Paducah, Complainant,

vs.

CITY OF PADUCAH, a Municipal Corporation of Kentucky, and FREDerick W. Katterjohn, Mayor of Paducah, William V. Eaton, Commissioner of Public Safety; Michael Williams, Commissioner of Public Property; Richard Wynn Tully, Commissioner of Public Finance; James M. Eaker, Commissioner of Public Works, Composing the Mayor and Board of Commissioners of the City of Paducah, Defendants.

Bill in Equity.

And thereupon your orator declares that it is a corporation organized by and existing under the laws of the State of Kentucky, with power to sue and be sued, contract and be contracted with, in its corporate name, Paducah Railway Company.

II.

The defendant, City of Paducah, is a municipal corporation, organized by and existing under the laws of the State of Kentucky, with power to sue and be sued, contract and be contracted, with, in its corporate name. Under the provisions of Chapter 82, Article 1, Kentucky Statute, cities and towns are divided into six classes, and Paducah is by said act, designated a city of the second class. The
2 population of said city is, 27,400 people, but with its suburbs and immediate environments your orator serves about 30,000 people with its street car system. All legislative power is vested in the Mayor and four Commissioners. The city has adopted what is known and called in Chapter 89, Section 32 C Kentucky Statutes, the "Commission Form of Government," which act provides that there shall be four Commissioners elected by the people of the City, who, together with the Mayor, shall enact all ordinances, grant franchises, and ordain other legislative acts. The defendant, Frederick W. Katterjohn, is and was at all times hereinafter complained of, the duly elected, qualified and acting Mayor of the City of Paducah, and the defendant, William V. Eaton, is and was at all times hereinafter complained of, the duly elected, qualified and acting Commissioner of Public Safety; and a member of the Board of Commissioners of said City; and the defendant, Michael Williams, is and was at all times hereinafter complained of, the duly elected, qualified and acting Commissioner of Public Property, and a member of the Board of Commissioners of said City; and the defendant, Richard Wynn Tully, is and was at all times hereinafter complained of, the duly elected, qualified and acting Commissioner of Public Finance, and a member of the Board of Commissioners of said City; and the defendant, James M. Eaker, is and was at all times hereinafter complained of, the duly elected, qualified and acting Commissioner of Public Works, and a member of the Board of Commissioners of said City.

III.

Your orator avers that it owns and operates a system of electric street railway in the City of Paducah; consisting of 18.25 miles of tracks traversing Broadway Street, Third Street, Sixth Street, Jefferson Street, and many of the other principal thoroughfares of said City; and it is now and has been at all times herein men-
3 tioned, engaged in the transportation of passengers in cars passing over its tracks.

Complainant is a successor in title to the Paducah Traction Company, which latter concern was successor in title to previous owners of the electric street railway system, in the said City of Paducah.

There has been operated in said City for more than thirty years a system of electric street railway and the system now owned by your orator is the system originally established in said City but greatly enlarged by your orator and its immediate predecessor, the Paducah Traction Company. It avers that it purchased from the Paducah Traction Company on the first day of October, 1919, all of its prop-

erty, including tracks, wires, rails, poles, cars, barns, machinery equipment and each and every article owned and used by said Traction Company in connection with its conduct of a street railway, and it is now and has been since the first day of October, 1919, engaged in the operation of such system, devoted exclusively to the transportation of passengers from one to another place in said City and its immediate environments.

One of the line of your orator, to wit—the Jefferson Street line, extends beyond the corporate limits of Paducah, and into the County of McCracken for a distance of one mile and branching off from said Jefferson Street line extended, there is another line designated as the Avondale Heights line, which extends into the County of McCracken between a half and three-quarters of a mile. For the purpose of carrying on its business, it has supplied a large number of motor cars and trailers, to wit: twenty four (24) electric motor cars, and eight (8) trailers; and it owns and operates in connection with the street car system a large car shed and car building plant, together with all necessary machines, tools and appliances.

4 It does not own a power plant, but purchases its power from an electric Company located in said City. All of its cars depend for motive power upon electricity and the electricity is obtained by it as aforesaid, from said Paducah Electric Company.

In 1909 the Paducah Traction Company, the predecessor in title aforesaid to your orator, operated the same track mileage as is now operated by your orator, and it received for the twelve months of 1909, One Hundred Eleven Thousand, Two Hundred Sixty Eight Dollars and Thirteen Cents, ($111,268.13) gross revenue; the Operating Expenses for said year were Seventy Four Thousand, Seventy Three Dollars and Seventy Seven Cents, ($74,073.77); the Taxes paid for said year were Five Thousand, One Hundred Eighty Three Dollars and Fifty One Cents, ($5,183.51); the Interest paid during the said year upon the bonds issued by the Company was Forty Eight Thousand, Five Hundred Dollars and Sixteen Cents, ($48,500.16); so that said Company failed by Sixteen Thousand, Four Hundred Eighty Nine Dollars and Thirty One Cents ($16,489.31) to realize a sufficient sum to pay operating expenses, and interest on its bonded debt. For 1910 the gross revenue for the Company was One Hundred Twenty One Thousand, Four Hundred Ninety Two Dollars and Eleven Cents, ($121,492.11); its Operating Expenses for said year were Eighty One Thousand, Three Hundred Fifty Three Dollars and Twelve Cents, ($81,353.12); the Taxes paid for said year were Six Thousand, Five Hundred Twelve Dollars and Eighteen Cents, ($6,512.18); the Interest paid during said year upon the bonds issued by the Company was Forty Nine Thousand, Six Hundred Seventy Seven Dollars and Thirty One Cents, ($49,677.31); leaving a deficit of Sixteen Thousand, Fifty Dollars and Fifty Cents, ($16,050.50). For 1911 its gross revenue was One Hundred Twenty Six Thousand, One Hundred Thirteen Dollars and Eight Cents, ($126,113.08); its Operating expenses were Seventy Eight

5 Thousand, Sixty Six Dollars and Sixty Six Cents, ($78,066.66); its taxes, Six Thousand, One Hundred Thirty One

Dollars and Twenty Six Cents, ($6,131.26); its Interest on bonds, Fifty One Thousand, Two Dollars and Eighty One Cents, ($51,002.81) leaving a deficit of Nine Thousand, Eighty Seven Dollars and Sixty Five Cents, ($9,087.65). In 1912 its gross revenue was One Hundred Thirty Three Thousand, Sixty Six Dollars and Forty Cents, ($133,066.40); its Operating Expenses Ninety Two Thousand, Nine Hundred Thirty Dollars and Sixty Six Cents, ($92,930.66); its Taxes Six Thousand, Four Hundred Ninety Three Dollars and Twenty Nine Cents, ($6,493.29); its Interest charges Fifty Four Thousand, Ninety Seven Dollars and Seventy Two Cents, ($54,097.72), leaving a deficit of expenditures over the amount received, of Twenty Thousand, Four Hundred Fifty Five Dollars and Twenty Seven Cents, ($20,455.27). And in 1913 its gross revenue was One Hundred Thirty One Thousand, Seven Dollars and Twenty Six Cents, ($131,007.26); its Operating Expenses Ninety Four Thousand, Ninety Nine Dollars and Ninety Nine Cents, ($94,099.99); its Taxes Six Thousand, Six Hundred Seventy Six Dollars and Fifty Three Cents, ($6,676.53); its Interest Fifty Seven Thousand, Four Hundred Twelve Dollars and Ten Cents, ($57,412.10) and its deficit of expenditures over receipts, Twenty Seven Thousand, One Hundred Eighty One Dollars and Thirty Six Cents, ($27,181.36). And in 1914 its gross earnings were One Hundred Twenty Seven Thousand, Two Hundred Four Dollars and Seventy Four Cents, ($127,204.74); its Operating Expenses Ninety Five Thousand, Sixteen Dollars and Fourteen Cents, ($95,016.14); its taxes Seven Thousand, Five Hundred Ten Dollars and Three Cents, ($7,510.03); its Interest charges Sixty Two Thousand, Three Hundred Ninety Four Dollars and Sixty Six Cents, ($62,394.66), leaving a deficit of expenses over receipts of Thirty Seven Thousand, Seven Hundred Sixteen Dollars and Nine Cents, ($37,716.09). In 1915 its gross receipts were One Hundred Eleven Thousand, Seven Hundred Twenty Three Dollars and Twenty Five Cents, ($111,723.25); its
6 Operating Expenses Eighty One Thousand, Three Hundred Ninety Nine Dollars and Twelve Cents, ($81,399.12); its Taxes Seven Thousand, Four Hundred Seventy Five Dollars and Eighty One Cents, ($7,475.81); its Interest charges Sixty Four Thousand, Five Hundred Fifteen Dollars and Fifty One Cents, ($64,515.51), leaving a deficit over expenditures of receipts of Forty One Thousand, Six Hundred Sixty Seven Dollars and Nineteen Cents, ($41,667.19). In 1916 its gross receipts were One Hundred Twenty Thousand, Six Hundred Ninety Nine Dollars and Fifty Seven Cents, ($120,699.57); its Operating Expenses Eighty Six Thousand, Twenty Sever Dollars and Seventy Three Cents, ($86,027.73); its Taxes Seven Thousand, Four Hundred Seventy Three Dollars and Twenty Nine Cents, ($7,473.29); its Interest charges Sixty Six Thousand, Six Hundred Twenty Five Dollars and Sixty Seven Cents, ($66,625.67), leaving a deficit of expenditures over receipts of Thirty Nine Thousand, Four Hundred Twenty Seven Dollars and Twelve Cents, ($39,427.12). In 1917 its gross receipts were One Hundred Twenty Thousand, Seven Hundred Fifty Four Dollars and Twenty Four Cents, ($120,754.24); its Operating Ex-

penses Ninety Five Thousand, Eight Hundred Eight Dollars and Nine Cents, ($95,808.09); its Taxes Four Thousand, Three Hundred Three Dollars and Forty Three Cents, ($4,303.43); its Interest charges Seventy Thousand, Seven Hundred Two Dollars and Forty Cents, ($70,702.40), leaving a deficit of expenditures over receipts of Fifty Thousand, Fifty Nine Dollars and Sixty Eight Cents, ($50,059.68). In 1918 from January 1st to September 1st, 1918, its gross receipts were Seventy Six Thousand, Three Hundred Forty Five Dollars and Twenty Five Cents, ($76,345.25); its Operating Expenses Fifty Seven Thousand, Five Hundred Thirty Seven Dollars and Thirteen Cents, ($57,537.13); its Taxes Two Thousand, Eight Hundred Sixty Nine Dollars and Sixty One Cents, ($2,869.61), leaving a deficit of expenditures over receipts for eight months of said year of Thirty Four Thousand, Three Hundred Twenty Eight Dollars and Fifty Three Cents, ($34,328.53).

In 1918 said Traction Company was unable to meet the interest on its bonded debts and unable to meet the principal of one of its bond issues which matured in said year. All of the property of said Paducah Traction Company, being the property now owned and operated by your orator, went into the hands of a Receiver under and by virtue of an order of the McCracken County Circuit Court and said system of electric street railway was operated under the supervision of said Court from the first day of September, 1918, up to and including midnight of September 30th, 1919, when all of the property and effects of said Paducah Traction Company were purchased by your orator. The purchase price paid to said Paducah Traction Company on the first day of October, 1919, was Eight Hundred Twenty Five Thousand Dollars, ($825,000.00) since which time there has been expended by your orator Thirty Nine Thousand Seven Hundred Two Dollars and Two Cents, ($39,702.02), so it avers that the present cost of its property is Eight Hundred, Sixty Four Thousand, Seven Hundred Two Dollars and Two Cents, $(864,702.02), but in said value there is included no going value, or replacement cost. The Paducah Traction Company operated said railway system under a franchise obtained from the City of Paducah, wherein the fare for one single trip over the line including transfer, was fixed at Five Cents for adults and Two and one-half cents for half fare; however, on the first day of July, 1918, the City of Paducah, by agreement with said Paducah Traction Company, amended said ordinance and authorized said Company to charge cash fare of seven cents for one trip for adult and half fare for children, and when the property of said Company went into the hands of a Receiver, as aforesaid, the Receiver charged and received at all times, while said Company was being operated under the orders of the McCracken County Circuit Court, a cash fare of seven cents for adults and half fare for children. And at all times while said Company was operating said railway system under the five cent fare as fixed in said franchise, as well as when it was operating the same under the amended franchise, authorizing it to charge and receive a cash fare of Seven Cents, the operating expenses of said Company including interest charges, were greater than

the gross receipts. A statement showing the gross receipts, operating expenses and interest charges and deficits, year by year, from 1909 to 1917 and for eight months in the year of 1918, being from January 1st to September 1st, the date the said Company went into the hands of the Receiver, is filed herewith as a part hereof, marked "A."

On the 29th day of April, 1919, the City of Paducah passed an ordinance entitled, "An ordinance creating a franchise to acquire, construct, operate and maintain an electric street railway over certain streets in the city of Paducah, and providing for the sale thereof," and said franchise was in accordance with the provisions of said ordinance and the law of Kentucky exposed to sale at Public outcry at ten o'clock on the 6th day of June, 1919, and same was bought by one Alfred S. Nichols, and afterwards, to-wit, the said Nichols transferred and assigned said franchise to Stone & Webster and thereafter said Stone & Webster transferred and assigned the same to Your Orator, who is now the owner and holder thereof; said franchise authorized and empowered the owner thereof to operate an electric street railway over all the streets of the City of Paducah upon which tracks and rails are laid; which streets are those now being operated upon by Your Orator; said ordinance is filed herewith as part hereof in as complete and full a manner as though copied herein verbatim, marked "B."

When said Mayor and Commissioners of Paducah were considering the passage of said ordinance establishing said franchise, they were advised that the Paducah Traction Company had operated street cars over the streets named in said ordinance under the Five Cent fare and for a short time with a cash fare of Seven Cents; they were further advised that the gross receipts received by said Trac-
9 tion Company while operating under a Seven Cent Fare failed to produce a sum sufficient to pay operating expenses, taxes, and interests upon the money invested; yet notwithstanding said knowledge, said Mayor and Commissioners passed an ordinance and provided therein that for twelve months after the passage thereof, the purchaser operating thereunder, should be allowed to charge for adults only Six Cents and for children under twelve, Three Cents; but said provision in respect to fares was binding upon the purchaser of said franchise for twelve months from the commencement of operations thereunder. At the expiration of twelve months, the fares so fixed ceased to be binding upon the owner and operator of said franchise and no fare for adults or children after said twelve months was fixed in said ordinance.

Your orator avers that it commenced to operate under said ordinance on the first day of October, 1919. The 15th Section of said ordinance is as follows:

Section XV.

The fare for one continuous trip for twelve (12) months from the commencement of operation under this franchise is hereby fixed as follows:

Cash fare for adults	6c.
Children Under 12 and over 5	Half fare.
Children under 5 when accompanied by guardian	Nothing

At the end of such period the purchaser, shall submit a verified statement of the receipts and expenditures to the Mayor and Commissioners of the City of Paducah and if it appear therefrom (after investigation and verification of such report) that the purchaser has received more than a sufficient sum to pay expenses and a reasonable rate of return on the capital invested, such purchaser shall repay to the City of Paducah the difference between the amount necessary for such expenses and a reasonable rate of return upon invested capital and the amount actually received.

At the expiration of each twelve months during the life of this franchise, for the purpose of regulating fares to be charged by the purchaser, and to accomplish that purpose, and to prevent excessive fares, the purchaser, shall at the expiration of each twelve months during the life of this franchise submit to the Commissioners of the City of Paducah a verified statement of the receipts and expenditures and if from any of such reports it appears the fare as fixed is more than sufficient to provide a reasonable rate of return upon the invested capital, the City shall reduce such fares accordingly.

For the purpose of ascertaining the rate of fare to be charged hereunder the City may cause said property to be appraised as follows:

The City shall appoint a disinterested street railway expert and the purchaser shall appoint such expert appraiser for its part, and the two so appointed shall select a third expert appraiser. None of such persons so selected shall be a resident of McCracken County, Kentucky. Said experts shall report in writing to the Mayor and Commissioners of the City of Paducah within three months after their appointment the total valuation of the property owned, controlled or used by the purchaser, in connection with the operation of a street-car system in Paducah, and its vicinity but this franchise shall not be estimated or considered in its value. The cost of such appraisal to be borne equally by the City and the purchaser hereof.

After your orator had operated the street cars under the provision of said ordinance, from said first of October, 1919, to the 15th of September, 1920, and before, it ascertained from actual receipts and expenditures that the fare fixed therein did not, and could not, yield a sum sufficient to pay operating expenses, taxes and interest on money invested, and depreciation. For the year beginning October 1, 1919 and ending October 1, 1920, (a part of the month of September being estimated), the gross receipts of your orator from all sources is One Hundred Sixty Thousand, Eighty Four Dollars and Seventy Nine Cents, ($160,084.79); Operating Expenses, including taxes, is One Hundred Twenty Nine Thousand, Nine Hundred Eighteen Dollars and Fifty Five Cents, ($129,918.55).

Six percent (6%) interest on the amount of capital invested is Fifty One Thousand, Eight Hundred Eighty Two Dollars and Twelve Cents, ($51,882.12), making a total Operating Expenses of

One Hundred Eighty One Thousand, Eight Hundred Dollars and Sixty Seven Cents, ($181,800.67), but in addition to the amount stated, it is entitled to receive a sum sufficient to preserve the property from depreciation and provide for its up-keep and repair. And it says that four percent (4%) of the capital invested is a reasonable and customary percent for such purpose; that four percent upon the amount invested is Thirty Four Thousand, Five
11 Hundred Eighty Eight Dollars and Eight Cents ($34,588.08), making a total deficit of Fifty Six Thousand, Three Hundred Three Dollars and Ninety Six Cents, ($56,303.96). But your orator avers that a six percent (6%) return upon the invested capital is manifestly unfair and unjust; that because of the hazard of such investment, the life of its franchise and the uncalculated depreciation of this property, it is entitled to earn eight percent (8%) thereon; that eight percent (8%) is a reasonable return and if allowed to receive such percent upon its investment, the deficit would be Seventy Three Thousand, Five Hundred Ninety Eight Dollars ($73,598.00). So soon as it was ascertained from receipts and disbursements that a six (6) cent fare would not produce a sum sufficient to pay operating expenses, taxes, depreciation and interest on money invested, and in pursuance to the provision of the fifteenth section of this franchise, it addressed the Mayor and Board of Commissioners a letter on the 17th day of September, 1920, as follows:

Paducah, Ky., Sept. 17, 1920.

His Honor the Mayor and Gentlemen of the Board of Commissioners,
City of Paducah, Ky.

GENTLEMEN:

The first year of the life of the street railway franchise granted to this Company on April 29th, 1919, expires September 30th, 1920, and coincidently the period during which the franchise requires that six cents shall be the rate of fare.

We respectfully beg to direct your attention to the attitude of the Company at the time when Section XV of the franchise was under discussion. Prior to the commencement of operation under the present franchise, a seven cent fare was in effect. This fare had proven inadequate to meet the expense of operating the street railway system serving Paducah. The Board of Commissioners then in office made as a condition of the franchise the requirement that the Company should charge for the first year of the life of it a six cent fare. The degree to which the purchasing power of money had decreased indicated that so low a rate of fare would not cover the expense of operating the property during the first year of operation under the franchise. The Company, through its representative, protested to the Board and to the Public through the Press, that the rate of fare was inadequate but agreed to conform to the terms of the franchise, confident that public sentiment would ultimately accord the Company a rate of fare which would permit it to live and give good service. The six cent rate of fare has been inade-
12 quate as will presently be made clear.

We submit that a rate of fare fixed without consideration of the cost of service is the fundamental error that has involved the street railway systems of the nation in bankruptcy.

A rate of fare which will not permit a street railway to pay a fair wage to its employees, meet its operating expenses, taxes, depreciation and a reasonable return upon the investment prohibits that character of service which the best interest of the city require and indeed the public demands. An electric Railway cannot indefinitely continue to furnish service without a rate of fare that is adequate to meet the cost of operation that has practically doubled in the last five years. If proof of this statement is required, it may be stated that 7,000 miles of street railway track, representing almost 16 per cent of the entire trackage of the country, is in the hands of Receivers or has been junked. The problem of meeting the expenses of a street railway in a city the size of Paducah, where the volume of traffic is light, through a six cent fare, presents itself when it is known that the street railway of so large a city as Boston, carrying over 100 millions of passengers annually as compared with 2,673,872 in Paducah, has a ten cent fare in force. Sixty-two cities in the United States have a similar rate of fare in force. Among these is the municipality owned plant of the City of Seattle. Satisfactory street railway service is an indispensable factor in the life of the modern city. Good service cannot be permanently maintained, nor can new capital essential to the development of the street railway to meet the demand for service, be attracted to the community unless the reward or return upon the investment is sufficient to attract the prospective investor.

The deplorable condition of the street railways throughout the country is responsible for the fact that there is today practically no market for the securities of street railways.

The condition of this great industry carrying over eleven billion passengers a year, has addressed itself to a Federal Commission which has brought to the attention of the President, Public, State and Municipal officers, the need of relief if the street railways are to continue to function and provide a means of cheap and rapid transportation service to the communities in which they exist.

This Company operating under a six cent fare for the twelve month ending September 30, 1920, will fail to meet the operating expenses, taxes, depreciation and a reasonable rate of return upon its investment, to the amount of Seventy Two Thousand, Three Hundred Fifty Dollars and Ten Cents, ($72,350.10). It has carried 2,979,654 passengers at an average fare of 5.3 cents.

To provide a sufficient revenue to meet these legitimate charges, it will require a cash fare of 13.5 cents, based upon our estimated expenses for the year 1921.

On the basis of the existing price levels no less a rate of fare than this will meet the operating expenses, taxes, depreciation and a reasonable return upon the investment. In the hope that during the ensuing year commodity prices will descend and relief be afforded from the high operating costs now experienced, the Company is willing to operate for the twelve months beginning October 1, 1920,

at a lower schedule of fare, confident that your Honorable Board will appreciate the need of immediate relief.

13 Submitting to your consideration these facts and hopeful that you will recognize that it is in the public interest that the Company be placed upon as sound a financial basis as the time and conditions will permit, we beg to advise you that effective October 1st, 1920, the rate of fare upon the cars of the Paducah Street Railway will be:

Cash fare	10 cents
Tokens	7.5 cents
Half fare	5 cents

Transfers will be given without charge and tokens sold at the Company's agencies in the various portions of the City for the convenience of its patrons.

We attach a statement of the result of operation for the year ending October 1st, 1920. It has been necessary to estimate the result of operation for the month of September, as it is not yet closed, but the totals are approximately correct for the purpose in hand.

Very respectfully yours,

—— ——,
Manager.

A. S. N./B. W.

And accompanying said letter, and attached thereto, there was submitted to said Board of Commissioners and Mayor, a statement showing gross receipts, operating expenses, and the deficit for the year beginning October 1st, 1920, which statement is filed herewith as part hereof, marked "D," and in further compliance with said 15th Section of said Ordinance, on the 20th day of September, 1920, it addressed a verified communication to said Mayor and Board of Commissioners, showing the gross receipts from all sources for twelve months, and fixing the minimum value of its property used for conducting its street-car business at Eight Hundred Fifty Four Thousand, Three Hundred Thirty Dollars, ($854,330.00) and it requested said Mayor and Board of Commissioners, if dissatisfied with the valuation of the property fixed, to designate a street railway expert, who together with one appointed by your orator, the two to select a third, to report in writing the value of the prop-

14 erty owned, controlled or used by your orator in connection with its operation of said street car system in Paducah or its vicinity, so that it could be ascertained from such valuation if the fare proposed to be proclaimed by your orator is excessive. In said communication dated September 17, 1920, the Mayor and Board of Commissioners were advised that on and after October 1, 1920, your orator would charge for one continuous trip, transfers included, a cash fare of ten cents, with a discount fare of seven and one-half cents where tokens were purchased, and one-half fare for children; that such tokens would be sold by your orator's agents at various points in the City for the convenience of the travelling public,

It says that a fare of ten cents cash or seven and one-half cents, where tokens are purchased, and one-half fare for children, is reasonable and necessary; that such fare will not yield a sum greater than is needed to pay operating expenses, taxes, interest on invested capital and depreciation. During the year ending September 30, 1920, it carried 2,797,654 passengers and the average fare received was 5.32 cents. Upon receipt of the letter of September 20th, copy of which letter is filed herewith as part hereof, marked "E," said City of Paducah by and through its Mayor and Board of Commissioners, failed and refused to appoint an appraiser and declined to make any investigation of the valuation of your orator's property or of the truth of the statement in respect to gross receipts and operating expenses for the year ending September 20, 1920, but at once and without notice to your orator passed an ordinance fixing a rate of fare to be charged by your orator at six cents and provided a penalty of, from ten ($10.00) to Twenty ($20.00) Dollars for each passenger carried for fare in excess of said sum. The ordinance referred to is as follows, and is filed herewith as part hereof, marked "F."

15 *"An Ordinance Fixing the Rate of Fares to be Charged by Electric Street Railways and Other Persons within the City of Paducah and Providing Penalties for Violation Thereof."*

Whereas, the Paducah Railway Company has presented to the Board of Commissioners of the City a statement of conditions, from which it claims the right to increase the fares charged for carrying passengers upon its street cars; and,

Whereas, it is claimed by the Paducah Railway Company that it will, commencing with and including October 1, 1920, put into effect a *must* higher rate of fares for passengers on its street cars within the City of Paducah; and,

Whereas, it is claimed by the Paducah Railway Company that the fares provided for by Section 15 of its franchise of six (6) cents for adults, and of half fares for children under twelve years of age when accompanied by a guardian, is not binding upon it, by reason of the fact that said rate of fares, as fixed in said franchise, shall continue for one year from the commencement of operation under said franchise, which period of time will expire with and including September 30th, 1920; and,

Whereas, the placing of this extra charge and burden upon the traveling public within said City does not appear to the satisfaction of the Board of Commissioners to be authorized or warranted; therefore:

Be it ordained by the Board of Commissioners of the City of Paducah, Kentucky:

Section 1.

That commencing immediately after 12 o'clock midnight on September 30th, 1920, the fares that may be charged and collected for

passage upon any street car within the City of Paducah, and upon any electric street car system operating under any franchise granted by the City of Paducah, shall be as follows:

Cash fare for adults	6 cents.
For children under 12 years of age and over 5 years of age	Half fare.
For children under 5 years when accompanied by any person who is over 5 years of age	Nothing.

Section II.

Any person, firm or corporation operating any electric street railway or car within the City of Paducah, or under any franchise granted by the City of Paducah, who shall charge or attempt to collect any greater rate of fares for transportation upon any such electric street car than is provided in Section 1 hereof, shall be guilty of a violation of this ordinance, and each person, firm or corporation so violating said ordinance shall be fined in any
16 sum not less than Ten ($10.00) Dollars, nor more than Twenty ($20.00) Dollars for each violation thereof.

Section III.

All ordinances and parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section IV.

This ordinance shall take effect from and after its passage, record and publication.

F. W. KATTERJOHN,
Mayor.

Adopted	September	20th, 1920.
Recorded	"	21st, 1920.
Published	"	——, 1920.

It says said ordinance is unfair, confiscatory and oppressive; it compels your orator to maintain a street car system and carry passengers at a loss, and without allowing it a fair return for servi-es rendered. It is entitled to have its property devoted to the public use of carrying passengers on its lines, remain unimpaired in value and to receive for the services rendered, a reasonable return upon the value of its property so devoted to such uses and a sufficient amount to protect its property against depreciation and from impairment of value. Your orator says that said ordinance violates the 14th amendment of the Constitution of the United States, in that, it takes your orator's property without due process of law, and denies to it, the equal protection of the law. Said ordinance so passed on the 20th day of September 1920, subjects your orator to constant prosecution for violation of the 2nd Section thereof, and will cause

to it, annoyance and oppression and will prevent it from successfully and properly operating its street car system; that its officers and agents and servants will be constantly arrested and brought before the Courts; that the revenue received by it for the services rendered will not pay operating expenses, taxes, depreciation or a fair
17 return upon capital investments. It says that unless said Mayor and Board of Commissioners be enjoined and restrained from putting said ordinance into effect and be enjoined and restrained from interfering with your orator, it will be irreparably damaged; it will *lost* the revenue needed by it to pay operating expenses, taxes, interest on money invested and depreciation, and will be constantly interfered with and annoyed. And it says that it has no adequate remedy at law; that its loss of revenue, prosecution of its officers and interference with the conduct of its business, cannot be made good at law; it says that said ordinance so adopted on the 20th of September undertakes to and does prescribe a fare to be charged by your orator for transportation of passengers over lines extending beyond the corporate limits of Paducah. It says that said Mayor and Board of Commissioners have no authority in law to fix or regulate fares charged for transporting passengers beyond the corporate limits of said City. If compelled to operate under said ordinance, it will prove unremunerative, burdensome and oppressive and will inevitably result in a deficit to your orator of expenses over receipts. That its taxes, interest on money invested and depreciation will amount in the aggregate to more than it will receive for the services rendered if the fare is permitted to be and remain at six (6) cents.

Since 1914 the cost of labor for trainmen has increased 106 per cent, shop men 100 per cent, common labor employed in the upkeep of tracks 103 per cent, steel rails 108 per cent, White Oak ties 250 per cent, Red Oak ties 150 per cent, spikes 13⅓% per cent, car wheels 101 per cent, trolley wire 131 per cent, poles 250 per cent, curve oil 103 per cent and freight of material 92 per cent; that all of these articles are used by your orator in its business and it is required to meet such increased expenses while the receipts from the street-car system so operated in Paducah during said period, have remained practically or well nigh practically stationary. It says that a fare that was compensatory in 1914, would be and
18 is now, unjust and unremunerative. It does not own a power station, but obtains its motive power by contract from an Electric Company doing business in Paducah, but it says pays no profit for its power, and obtains the same at the cost of production, but it charges that the cost of producing electricity has increased from 1914 to 1920, 90 per cent; It says that said increase has been gradual from year to year, and is yet progressing and in the future will continue to increase; that taking the whole term of its franchise, if compelled to operate under the provisions of said ordinance complained of, it will be unremunerative, confiscatory and oppressive, and will take its property so devoted to public use without just compensation to it, for the services rendered and will deny to it the equal protection of the law.

Your orator says that it is a citizen of the State of Kentucky, and an inhabitant of the Western District thereof, that the defendants and each of them are citizens of the State of Kentucky and inhabitants of the Western District thereof, that the amount in controversy involved in this action, exceeds in value and amount Three Thousand Dollars, ($3,000.00) exclusive of interest and costs.

Wherefore your orator prays: The premises considered, that the City of Paducah and Frederick W. Katterjohn, Richard Wynn Tully, James M. Eaker, Michael Williams and William V. Eaton, composing the Mayor and Board of Commissioners of Paducah, be each enjoined and restrained from enforcing the provisions of the ordinance adopted by said City of Paducah on the 20th day of September, 1920, entitled, "An ordinance fixing the rate of fares to be charged by electric street railways and other persons within the City of Paducah, and providing penalties for violation thereof," and that said City of Paducah, its Mayor and Board of Commissioners aforesaid, its officers, agents and employees, be enjoined and restrained from instituting prosecution or prescutions against complainant, its agents or employees for the violation of any section or sections of said ordinance; and from interference in any way, with the
19 putting into effect by your orator of a schedule of fares that will be reasonable and compensatory, and not violative of your orator's rights; that Your Honor will be pleased to adjudge and determine that a six (6) cent fare of one trip for adults, including transfers, and half fare for children, over the lines of complainant, is not remunerative and is insufficient to produce such a sum as would pay operating expenses, taxes, interest on money invested and care for depreciation and up-keep, and is confiscatory and violative of complainant's rights; and to adjudge and determine that a ten (10) cent cash fare and discount fare of seven (7) and one-half cents where tokens are purchased, and half fare for children for one trip over complainant's lines, is fair and reasonable, and for such other and further relief as in law or equite it may be entitled to receive; and your orator will ever pray, etc.

CHAS. K. WHEELER.
D. H. HUGHES.
JAS. G. WHEELER.

A. S. Nichols says he is Manager of the Paducah Railway Company, whose chief officers and agents are now absent from Kentucky; that he is authorized to make this oath and he believes the statements contained in the foregoing bill of complaint to be true.

A. S. NICHOLS.

Subscribed and sworn to before me, this the 28th day of September, 1920.

A. C. RONALD,
Clerk,
By W. A. BLACKBURN,
D. C.

EXHIBIT "A."

Paducah Railway Company.

Financial Statement for Years of

	1909.	1910.	1911.	1912.	1913.
Gross Earnings	111,268.13	121,492.11	126,113.08	133,066.40	131,007.26
Oper. Expenses	74,073.77	81,353.12	78,066.66	92,930.66	94,099.99
Balance	37,194.36	40,138.99	48,046.42	40,135.74	36,907.27
Taxes	5,183.51	6,512.18	6,131.26	6,493.29	6,676.53
Net Earnings	32,010.85	33,626.81	41,915.16	33,642.45	30,230.74
Interest Charges	48,500.16	49,677.31	51,002.81	54,097.72	57,412.10
Bal. for Reserves	16,489.31	16,050.50	9,087.65	20,455.27	27,181.36
Imp. Fund	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00
Bal. for Res. & Div	17,689.31	17,250.50	10,287.65	21,655.27	28,381.36

	1914.	1915.	1916.	1917.	1918, 8 months,
Gross Earnings	127,204.74	111,723.25	120,699.57	120,754.24	76,345.25
Oper. Expenses	95,016.14	81,399.12	86,027.73	95,808.09	57,537.13
Balance	32,188.60	30,324.13	34,671.84	24,946.15	18,808.12
Taxes	7,510.03	7,475.81	7,473.29	4,303.43	2,869.61
Net Earnings	24,678.57	22,848.32	27,198.55	20,642.72	15,938.51
Interest Charges	62,394.66	64,515.51	66,625.67	70,702.40	50,267.04
Bal. for Reserves	37,716.09	41,667.19	39,427.12	50,059.68	34,328.53
Imp. Fund	1,200.00	2,025.00	2,850.00	3,780.00	2,436.26
Bal. for Res. & Div	38,916.09	43,692.19	42,277.12	53,839.68	36,764.79

21 EXHIBIT "B."

An Ordinance Creating a Franchise to Acquire, Construct, Operate, and Maintain an Electric Street Railway Over Certain Streets in the City of Paducah and Providing for the Sale Thereof.

Detail of Passage of Ordinance Granting the Paducah Traction Company a New Franchise.

Passed first reading April 4th, 1919.

The Board of City Commissioners' action of April 4th, 1919, passing this ordinance on its first reading was rescinded on April 22nd, 1919.

Ordinance in its revised form passed on first reading April 22nd, 1919.

Ordinance passed on its final reading April 29th, 1919. Advertised for sale for twenty (20) days, beginning May 16th, 1919, as follows:

Notice of Sale.

In pursuance to the provisions of an ordinance adopted by the Board of Commissioners of the City of Paducah on the 29th day of April, 1919, creating a franchise to acquire, construct, operate, and maintain an electric street railway in Paducah, I will as Mayor of Paducah, expose to sale to the highest bidder on the City Hall steps in the City of Paducah, at 10 o'clock A. M., on June 6th, 1919, for cash, a franchise to construct, operate, and maintain an electric street railway over Nineteenth Street, Broadway, Guthrie Avenue, Jackson Street, Eleventh Street, Caldwell Street, Fourth Street, Kentucky Avenue, Third Street, Broad Street, Sixth Street, Benton Road, Clements Street, Yeiser Avenue, Hayes Avenue, Madison Street, Fifth Street, Trimble Street, Tenth Street, Burnett Street, Twelfth Street, Palm Street, Thirteenth Street and Cairo road, to the highest and best bidder.

The City reserves the right to reject any and all bids. The purchaser will be required to give to the Commissioners of the City of Paducah his writeen acceptance of the provisions of the ordi-
22 nance under which this sale takes place before he shall become vested with the rights therein set forth.

FRANK N. BURNS,
Mayor.

May 16, 1919.

Sold by Mayor to the highest bidder on City Hall steps at ten o'clock A. M. June 6th, 1919.

Bought by Alfred S. Nichols and assigned to Messrs. Stone & Webster, June 6th, 1919.

Purchase price $250.00.

Assigned by Messrs. Stone & Webster to Paducah Railway Company October 1st, 1919.

An Ordinance Creating a Franchise to Acquire, Construct, Operate, and Maintain an Electric Street Railway Over Certain Streets of the City of Paducah and Providing for the Sale Thereof.

Be it ordained by the Board of Commissioners of the City of Paducah, Kentucky:

Section I.

A franchise to acquire, construct, operate and maintain an electric street railway over certain streets in the City of Paducah is hereby created. This franchise shall continue for a period of twenty (20) years from the passage, approval and publication of this Ordinance. The Mayor of the City of Paducah, Kentucky, after advertising for twenty days in the official newspaper of Paducah, Kentucky, the time and place of said sale, shall, at ten (10) o'clock A. M., on the steps of the City Hall of said City, expose to sale the franchise herein created on the terms and conditions, and with the rights and privileges herein set forth, to the highest and best bidder, but the City reserves the right to reject any and all bids. The Mayor shall report, in writing, the name of the purchaser to the Board of
23 Commissioners, at the first meeting of said Board after said sale.

Before becoming vested with title the purchaser shall accept the terms and conditions of this franchise, in writing, and when so accepted, the same shall inure to the successors and assigns of the purchaser hereunder, but no transfer or assignment of the rights and privileges granted herein shall be made by the purchaser until and unless he shall notify the Commissioners of the City of Paducah of such sale and transfer. The word purchaser, as used in this ordinance, shall be deemed to mean the purchaser hereof and his or its successors and assigns.

Section II.

When the purchaser of this franchise gives to the Commissioners of the City of Paducah written acceptance thereof, title shall at once vest in said purchaser for the period of twenty (20) years from the passage, approval and publication of this Ordinance.

Section III.

The purchaser of this franchise is hereby granted for a period of twenty (20) years from the passage, approval and publication of this Ordinance a franchise to acquire, construct, maintain and operate an electric street railway, with single or double tracks, together with such turnouts, switches, curves and other apparatus, equipment and appurtenance, as may be necessary therefor over and along the following streets of the City of Paducah, Kentucky:

"On Nineteenth Street from Broadway to and across Guthrie Avenue; on Guthrie Avenue from Nineteenth Street to the Mayfield road; on South Ninth Street from Broadway to Jackson Street; on Jackson Street from South Ninth to Eleventh Street; on Eleventh Street from Jackson Street to Caldwell Street; on Caldwell Street from Eleventh to Thirteenth Street; thence on the street extending from Caldwell Street to the Union Station, or the Illinois Central Depot.

On South Sixth Street from Broadway to Broad Street; on Fourth Street from Broadway to Kentucky Avenue; on Kentucky Avenue from Third Street to Fourth; on Third Street from Broadway to Broad Street; on Broad Street from Third Street to Fourth
24 Street; from Sixth Street to Benton Road, or Bridge Street; on Benton Road or Bridge Street, across Island Creek; on Benton Road or Bridge Street; across Island Creek to Clements Street; on Clements Street from Benton Road or Bridge Street to Yeiser Avenue; on Yeiser Avenue from Clements Street to Hays Avenue; on Hays Avenue from Yeiser Avenue to the Benton Road or Bridge Street; to the City Limits; on North Fourth Street from Broadway to Madison Street; on Madison Street from Fourth Street to Fifth Street; from Madison Street on Fifth Street to Trimble Street; on Trimble Street from Fifth Street to Tenth Street; on Tenth Street from Trimble Street to Burnett Street; on Burnett Street from Tenth Street to Twelfth Street; on Twelfth Street from Burnett Street to Palm Street; on Palm Street from Twelfth Street to Thirteenth Street; on Thirteenth Street from Palm Street, or Cairo Road, to City Limits; on North Sixth Street from Broadway to Madison Street; on Madison Street from Sixth Street to Twelfth Street; on Twelfth Street from Madison Street to Trimble Street; on Trimble Street from Twelfth Street to Oak Grove Cemetery."

and such other streets, or public places in the City of Paducah as may, at the request of the purchaser, be hereafter designated by resolution of the Board of Commissioners.

Section IV.

Rails or roads constructed under this franchise shall be laid or constructed as near as practicable in the center of the street. No street now traversed by a single track street railway shall be double-tracked, without the consent, by resolution, of the Board of Commissioners, and in constructing turnouts or switches no greater distance shall be left between the turnout or switch and main track than is sufficient to clear passing cars, and switches and turnouts shall be located at such point, or points, as shall be designated by the Board of Commissioners. Should said purchaser fail or refuse to comply with the provisions of this Section, it shall be fined Twenty ($20.00) Dollars for each day it so fails or refuses.

Section V.

If any of the streets mentioned in this franchise now made with gravel or macadam, shall be ordered improved by laying
25 bitulitic, brick, wood or other paving upon a base of concrete, the purchaser hereof shall at its own expense construct on said street under its track for the space between the rails and a foot on either side of the rails, a base of foundation, level with the upper surface of its ties, of concrete of similar quality and thickness such as the city may construct on the street not occupied by the tracks of the Street Railway.

The purchaser shall not be required to pay for the cost of surface paving of brick, bitulitic, wood, or other material which may be used in the construction of any street occupied by its tracks and ordered improved.

Section VI.

If the surface of any street between the rails, or one foot on each side thereof is injured or damaged from operating cars thereon, or through repairs to or renewal of ties or rails or gravel on gravel streets between the tracks is displaced by operation of cars thereon, or from carelessness or negligence upon the part of the purchaser of this franchise, said purchaser shall repair and reconstruct the damaged portion of said street; and, if such purchaser fails for ten (10) days after written notice to re*apir* or reconstruct such damaged street, the City reserves the right to make such improvements at the expense of owner of this franchise. The City reserves the right to require the purchaser to conform to changed or altered grades of streets over which he may operate under this franchise, to make culverts for the free flow of water, for the width of the track and a foot on the outside of each rail, at the expense of said purchaser, and said purchaser shall hold said City harmless from any damage or delay in the operation of the business of said purchaser, occasioned by street improvements, repairs or construction of streets,
26 bursting or repair of any sewer or pipe on or across any street or alley, or injury by any mob or violence from strikes.

Section VII.

Cars shall be run on the several lines of the street railway system of the purchaser, from end to end, at least once an hour from opposite directions, between the hours of 6:00 A. M. and 10:00 P. M. each day, unless delayed or suspended for causes beyond the control of said purchaser, or for reasons stated in Section eleven hereof. The City reserves the right to regulate the frequency of trips within the hours of operation set forth in this franchise, provided that no regulation of the hours of service shall impair the present or future ability of the purchaser to earn a reasonable return on the value of its property.

Should said purchaser fail to comply with the provisions of this Section for ten (10) consecutive days, then for each day thereafter it may be fined Twenty ($20.00) Dollars.

Section VIII.

Cars shall be run at a speed not exceeding ten miles per hour within the business portion of the City, and an average of twelve miles elsewhere, and when signalled by passengers, or parties desiring passage on said cars, the same shall be stopped on the near side of the nearest crossing after receiving such signal.

Section IX.

The said purchaser is hereby permitted to erect poles of wood or iron, along the streets and inside the curbstones and next thereto of said City over which the purchaser is hereby given the right-of-way, and to place brackets and span wires thereon and between same, and stretch feed wires thereon, for the distribution of electrical
27 current, this work shall be done in such a manner as not to interfere with or impede the ordinary travel of said streets, or the electric wires of the City of Paducah, and all displacements of the streets or sidewalks shall be promptly repaired in as expeditious a manner as possible, and put back in as good condition as before the work was done; and the purchaser shall be responsible to the City of Paducah, or to any person, for any damage sustained by reason of the erection of poles, wires, etc. The trolley wires of said railway shall not be less than eighteen (18) feet from the street. The purchaser shall at all times comply with any ordinance the Board of Commissioners of the City of Paducah may adopt directing change of wires or alterations in the location of the poles of the purchaser, and the wires shall be raised or lowered when so ordered by the said Board.

Section X.

If the purchaser fails, except for causes beyond its control, or for reasons herein stated, to operate cars for a period of thirty days over any part of its system, then the franchise to operate over such part of its system may be declared null and void.

Section XI.

The street-car system now constructed, or hereafter to be constructed or operated on Broadway, from First Street to Nineteenth Street, is hereby declared to be the trunk line of the system to be constructed by the purchaser of this franchise, and if any line of such system leading from said trunk line shall become unprofitable; that is, if such line fails to produce sufficient revenue to meet its operating expenses, taxes, a reasonable return upon the investment and depreciation, then such line may be abandoned upon satisfactory proof to the Broad of Commissioners of the unprofitableness of the

line in question, and the abandonment thereof shall not
28 affect the right of the purchaser, its successors or assigns, to operate a street-car system over the other streets mentioned in this franchise.

Section XII.

Any person or company authorized by the City of Paducah to place wires over or across the streets or public places of the City of Paducah, may use the poles erected under this grant, but such persons or company shall pay the owners of this franchise a just compensation for the use of such poles, but the City may use said poles for street lighting circuits, or for its police or fire alarm circuits, during the life of this franchise, free of charge.

Section XIII.

All street railway tracks shall be standard gauge four feet eight and one-half inches, from rail to rail; all rails shall be what is known and called "T" rails and of steel, and shall be laid on a level with the pavement or surface of the street, with suitable bridges or culverts to allow the free flow of water. The city reserves the right to take up and remove temporarily any railway tracks laid under the authority of this franchise, or to permit others to do so, whenever it shall be necessary to repair or improve streets, lay water or sewer pipes, or for other public purposes, but such repairs or improvements shall be made without unnecessary delay, and any track thus removed shall be replaced by, or at the expense of the party for whom the improvements are made.

Section XIV.

The purchaser shall be liable in all cases for carelessness, negligence or misconduct from any cause, of its agents, servants or employees in the construction, use or management of said railway, and said purchaser shall hold the City harmless from any and all damage which may be claimed by owners of property, or any person
29 on account of laying of street railway tracks, or in the use thereof by running cars on same.

Section XV.

The fare for one continuous trip for twelve (12) months from the commencement of operation under this franchise is hereby fixed as follows:

Cash fare for adults	6¢
Children under twelve and over five	Half fare.
Children under five when accompanied by guardian	Nothing.

At the end of such period the purchaser, shall submit a verified statement of the receipts and expenditures to the Mayor and Commission-

ers of the City of Paducah and if it appear therefrom (after investigation and verification of such report) that the purchaser has received more than a sufficient sum to pay expenses and a reasonable rate of return on the capital invested, such purchaser shall re-pay to the City of Paducah the difference between the amount necessary for such expenses and a reasonable rate of return upon invested capital and the amount actually received.

At the expiration of each twelve months during the life of this franchise, for the purpose of regulating fares to be charged by the purchaser, and to accomplish that purpose, and to prevent excessive fares, the purchaser, shall at the expiration of each twelve months during the life of this franchise submit to the Commissioners of the City of Paducah a verified statement of the receipts and expenditures and if from any of such reports it appears the fare as fixed is more than sufficient to provide a reasonable rate of return upon the invested capital, the City shall reduce such fare accordingly.

For the purpose of ascertaining the rate of fare to be charged hereunder the City may cause said property to be appraised as follows:

The City shall appoint a disinterested street railway expert, and the purchaser shall appoint such expert appraiser for its part, and the two so appointed shall select a third expert appraiser.

None of such persons so selected shall be a resident of McCracken County, Kentucky. Said experts shall report in writing to the Mayor and Commissioners of the City of Paducah within three months after their appointment the total valuation of the property owned, controlled or used by the purchaser, in connection with the operation of a street-car system in Paducah, and its vicinity but this franchise shall not be estimated or considered in its value. The cost of such appraisal to be borne equally by the City and the purchaser hereof.

Section XVI.

The purchaser, in the operation of street cars in the City of Paducah, shall conform to the following regulations:

No cars shall be allowed to stop within intersecting of any street, except to prevent a collision or damage to person or property. Trainmen shall keep a diligent watch for all teams, motor vehicles, carriages and persons, and upon discovery of danger, the cars shall be stopped in the shortest possible time. At designated stopping points the front platform of cars must be in such position as to enable passengers to conveniently step therefrom to the street. Cars shall be entitled to the track and vehicles upon said track, or close to same, shall turn out whenever a car approaches thereon, and shall leave the same clear and unencumbered, and the driver of any vehicle who refuses to leave the track when signaled or requested to do so by the trainmen, shall be guilty of a misdemeanor and fined for each offense Ten ($10.00) Dollars.

Passengers shall not leave the cars while in motion, except at their own risk. Cars shall be provided with headlights after sunset and no regular car shall remain at either end of the track or route for a longer time than fifteen minutes.

31 No freight shall be hauled on street-cars, but parcels, baskets and small packages may be carried thereon.

Section XVII.

If the purchaser shall fail to comply with the stipulations, regulations and requirements of this Ordinance, and such other valid ordinances as the Board of Commissioners may hereafter pass, in the proper exercise of its police power, then this franchise may be declared null and void, and the tracks may be removed from the streets at the expense of the owners, but before such action is taken the Board of Commissioners shall give twenty days' notice to the owner or manager of said railway of its intention to nullify this franchise, and shall give a fair hearing on the facts upon which such action is proposed to be taken, during the life of this franchise.

Section XVIII.

The City reserves the right to purchase, at any time upon thirty (30) days' written notice, the street railways, acquired or hereafter constructed under this grant, together with all tracks, poles, rails, cars and other appurtenances, by paying just compensation therefor, to be determined by Appraisal as set forth in Section 15 hereof, but this franchise shall not be estimated in the purchase price.

Section XIX.

This Ordinance shall take effect upon its passage, approval and publication, but the purchaser shall not commence to operate hereunder unless and until the purchaser acquires ownership or control of substantially the existing property (except merchandise and supplies, cash on hand and bills, and Accounts Receivable) of The Paducah Traction Company, together with all franchise or franchises for the construction, operation and maintenance of street rail-
32 ways which said The Paducah Traction Company derived from the City of Paducah under which any operations are carried on by said Company, (authority in the purchaser to make such acquis-tion being hereby granted), and upon the acquis-tion of the ownership or control of said property and franchise or franchises such franchise or franchises so acquired shall be deemed, in consideration of the granting by this ordinance of a valid franchise authorizing the purchaser to operate the street railway system hereinbefore described, to be surrendered to the City of Paducah and repealed and all claims thereunder shall become null and void.

33 "EXHIBIT C."

Paducah, Ky., Sept. 17, 1920.

His Honor the Mayor and Gentlemen of the Board of Commissioners, City of Paducah, Ky.

GENTLEMEN:

The first year of the life of the street railway franchise granted to this Company on April 29th, 1919, expires Sept. 30th, 1920, and coincidently the period during which the franchise requires that six cents shall be the rate of fare.

We respectfully beg to direct your attention to the attitude of the Company at the time when Section XV of the franchise was under discussion. Prior to the commencement of operation under the present franchise a seven cent fare was in effect. This fare had proven inadequate to meet the expense of operating the street railway system serving Paducah. The Board of Commissioners then in office made as a condition of the franchise the requirement that the Company should charge for the first year of the life of it a six cent fare. The degree to which the purchasing power of money had decreased indicated that so low a rate of fare would not cover the expense of operating the property during the first year of operation under the franchise. The Company, through its representative, protested to the Board and to the public through the Press that the rate of fare was inadequate but agreed to conform to the terms of the franchise, confident that public sentiment would ultimately accord the Company a rate of fare which would permit it to live and give good service. The six cent rate of fare has been inadequate as will presently be made clear.

We submit that a rate of fare fixed without consideration of the cost of service is the fundamental error that has involved the street railway systems of the nation in bankruptcy.

34 A rate of fare which will not permit a street railway to pay a fair wage to its employees, meet its operating expenses, taxes, depreciation and a reasonable return upon the investment prohibits that character of service which the best interest- of the city require and indeed the public demands. An electric railway can not indefinitely continue to furnish service without a rate of fare that is adequate to meet the cost of operation that has practically doubled in the last five years. If proof of this statement is required it may be stated that 7,000 miles of street railway track, representing almost 16 per cent of the entire trackage of the country, is in the hands of Receivers or has been junked. The problem of meeting the expenses of a street railway in a city the size of Paducah where the volume of traffic is light, through a six cent fare, presents itself when it is known that the street railway of so large a city as Boston, carrying over 100 millions of passengers annually as compared with 2,673,872 in Paducah, has a ten cent fare in force. Sixty-two cities in the United States have a similar rate of fare in force. Among these is the municipally owned plant of the City of

Seattle. Satisfactory street railway service is an indispensable factor in the life of the modern city. Good service can not be permanently maintained, nor can new capital essential to the development of the street railway to meet the demand for service be attracted to the community, unless the reward or return upon the investment is sufficient to attract the prospective investor.

The deplorable condition of the street railways throughout the country is responsible for the fact that there is today practically no market for the securities of street railways.

The condition of this great industry carrying over eleven billion passengers a year, has addressed itself to a Federal Commission which has brought to the attention of the President, public, state and municipal officers the need of relief if the street railways
35 are to continue to function and provide a means of cheap and rapid transportation service to the communities in which they exist.

This Company operating under a six cent fare for the twelve months ending Sept. 30th, 1920, will fail to meet its operating expenses, taxes, depreciation and a reasonable rate of return upon its investment, to the amount of $72,350.10. It has carried 2,979,654 passengers at an average fare of 05.3 cents.

To provide a sufficient revenue to meet these legitimate charges will require a cash fare of 13.5 cents, based upon our estimated expenses for the year 1921.

On the basis of the existing price levels no less a rate of fare than this will meet the operating expenses, taxes, depreciation and a reasonable return upon the investment. In the hope that during the ensuing year commodity prices will descend and relief be afforded from the high operating costs now experienced, the Company is willing to operate for the twelve months beginning Oct. 1st, 1920, at a lower schedule of fare, confident that your honorable board will appreciate the need of immediate relief.

Submitting to your consideration these facts and hopeful that you will recognize that it is in the public interest that the Company be placed upon as sound a financial basis as the time and conditions will permit, we beg to advise you that effective October 1st, 1920, the rate of fare upon the cars of the Paducah Street Railway will be:

Cash fare	10 cents.
Tokens	7.5 cents.
Half fare	5 cents.

Transfers will be given without charge and tokens sold at the Company's agencies in the various portions of the city for the convenience of its patrons.

We attach a statement of the result of operation for the year ending October 1st, 1920. It has been necessary to estimate the
36 result of operation for the month of September, as it is not yet closed, but the totals are approximately correct for the purpose in hand.

Very respectfully yours,

——— ———,
Manager.

A. S. N./B. W.

37 EXHIBIT "D."

Paducah Railway Company, Inc.

Statement Showing Ear-ings from Operation 12 *Months Ending Sept.* 30, 1920.

(Cash Fare Six Cents (6¢).

Revenue from transportation:	
Acct. #1—Passenger Revenue	$158,534.52
Special Car	563.58
Total revenue from transportation	$159,098.10
Revenue from operation other than transportation:	
Acct. #10—Station & Car Privileges	580.16
Acct. #19—Miscellaneous	406.53
Total revenue from operation other than transportation	986.69
Total revenues	$160,084.79
Operating expenses:	
Way & Structures	7,039.07
Total Equipment	17,320.89
Total Traffic	7,134.85
Conducting Transportations	59,860.39
Injuries & Damages	12,945.60
General & Miscellaneous	19,719.52
Total operating expenses	124,020.32
Taxes	5,898.21
Depreciation 4% on $854,303.00	34,172.12
	164,090.65
Balance available for return on capital	4,055.86
Amount required to provide an 8% return on investment as of Sept. 30, '20	68,344.24
Amount by which actual earnings did not meet requirement of investment	72,350.10
Number of Passengers Carried	2,979,654
Average Fare	5.32¢

38 EXHIBIT "E."

Sept. 20, 1920.

His Honor the Mayor and Gentlemen of the Board of Commissioners, City of Paducah, Ky.

GENTLEMEN:

Supplementing my communication to you of the 17th, advising you of the purpose of the Paducah Railway Company to raise its fare, I beg to state that the total receipts from all sources of said Company was for the twelve months ending October 1st, 1920 (September estimated) $160,084.79.

That the valuation of said Company as of date Jan. 1st, 1915, was as a minimum $854,303.00; that the total operating expenses including 4% depreciation for said period is $164,090.65.

This statement is made in compliance with Section 15 of the Ordinance establishing the franchise now owned by the Railway Company. If you are dissatisfied with the valuation of said Company's property herein fixed, will you please designate a disinterested street railway expert, who together with one to be appointed by the Company, the two to select a third appraiser, shall report in writing to your body the total value of the property owned, controlled or used by this Company in connection with the operation of a street car system in Paducah and its vicinity, so that you may ascertain from such valuation if the fare the Company proposes to proclaim as effective on and after October 1st, 1920, is excessive.

Yours very truly,

—— ——,
Manager.

A. S. N./B. W.

The affiant, Alfred S. Nichols, says he is Manager of the Paducah Railway Company, and he believes the statements contained herein to be true.

—— ——.

Subscribed and sworn to before me this — day of Sept., 1920.

—— ——.

39 EXHIBIT "F."

An Ordinance Fixing the Rate of Fares to be Charged by Electric Street Railways and Other Persons Within the City of Paducah and Providing Penalties for Violation Thereof.

Whereas, The Paducah Railway Company has presented to the Board of Commissioners of the City a statement of conditions, from which it claims the right to increase the fares charged for carrying passengers upon its street cars; and,

Whereas, it is claimed by the Paducah Railway Company that it will, commencing with and including October 1, 1920, put into effect a much higher rate of fares for passengers on its street cars within the City of Paducah; and,

Whereas, it is claimed by the Paducah Railway Company that the fares provided for by Section 15 of its Franchise of Six (6) Cents for adults, and of Half Fares for children under twelve years of age when accompanied by a guardian, is not binding upon it, by reason of the fact that said rate of fares, as fixed in said Franchise, shall continue for one year from the commencement of operation under said Franchise, which period of time will expire with and including September 30th, 1920; and,

Whereas, the placing of this extra charge and burden upon the traveling public within said City does not appear to the satisfaction of the Board of Commissioners to be authorized or warranted; therefore,—

Be it ordained by the Board of Commissioners of the City of Paducah, Kentucky:

Section 1.

That commencing immediately after 12 o'clock midnight on September 30th, 1920, the fares that may be charged and collected for passage upon any street car within the City of Paducah, and upon any electric street car system operating under any Franchise granted by the City of Paducah shall be as follows:

Cash Fare for Adults	6 Cents.
For children under 12 years of age and over 5 years of age	Half Fares.
For children under 5 when accompanied by any person who is over 5 years of age	Nothing.

Section 2.

Any person, firm or corporation operating any electric Street railway or car within the City of Paducah, or under any Franchise granted by the City of Paducah, who shall charge or attempt to collect any greater rate of fares for transportation upon any such electric street car than is provided in Section 1 hereof, shall be guilty of a violation of this Ordinance, and each such person, firm or corporation so violating said Ordinance shall be fined in any sum not less than Ten ($10.00) Dollars, nor more than Twenty ($20.00) Dollars for each violation thereof.

Section 3.

All ordinances and parts of ordinances in conflict herewith, are, to the extent of such conflict, hereby repealed.

Section 4.

This Ordinance shall take effect from and after its passage, record and publication.

F. W. KATTERJOHN,
Mayor.

Adopted September 20th, 1920.
Recorded " 21st, 1920.
Published " —, 1920.

41 EXHIBIT "G."

Increase in Cost of Materials, 1914-1920.

Coal Used under Boilers.

Kind.	Cost 1914.	Cost 1920.	% of inc.
P. & S.	$0.36	$2.05	470%
N. P. & S.	0.62½	2.25	260%

Freight on Coal.

Kind.	Cost 1914.	Cost 1920.	% of inc.
P. & S.	$0.65	$1.25	92%
N. P. & S.	.80	1.50	88%

Increase Cost of Labor.

Kind.	Cost 1914.	Cost 1920.	% of inc.
Trainmen	15¢ to 18¢ per hr.	32 to 36¢ per hr.	106%
Shopmen	Aver. 25¢ per hr.	50¢ per hr.	100%
Common Labor	15¢ per hr.	35¢ per hr.	133%

Increase Cost of Materials.

	Cost 1914.	Cost 1920.	% of inc.
Steel Rail 60# basis	$30.00 per ton.	$62.50 pr. ton.	108%
White Oak Ties	45 to 60¢ each.	1.75 each.	250
Red Oak Ties	35 to 40¢ each.	1.00 each.	150
Spikes	4½¢ per lb.	10½¢ per lb.	133
Car Wheels 33"	$8.84 each.	17.80 each.	101
Trolley Wire	16¢ jer lb.	37¢ per lb.	131
Poles 30 x 35 ft.	$4.35 each.	$15.45 each.	255
Car Oil	18¢.	33¢.	83
Curve Oil	9¢	19½¢	117

Increased Cost of Electric Energy.

	Cost 1914.	Cost 1920.	% of inc.
Cost basis as per agreement with the Paducah Light & Power Company	$.0816	$.655	90%

42 The following is subpœna in chancery, issued September 28th, 1920.

No. 11.

THE UNITED STATES OF AMERICA,
Western District of Kentucky, at Paducah, ss:

Thhe President of the United States of America to the Marshall of the Western District of Kentucky, Greeting:

You are hereby commanded to subpœna City of Paducah, a municipal corporation of Kentucky,
Frederick W. Katterjohn, Mayor of Paducah,
William V. Eaton, Commissioner of Public Safety,
Michael Williams, Commissioner of Public property,
Richard Wynn Tully, Commissioner of Public Finance,
James M. Eaker, Commissioner of Public Works,
citizens of and resident in the State of Kentucky, if they be found in your District to be and appear in the District Court of the United States for the Western District of Kentucky aforesaid, at Paducah, Kentucky, to answer a certain Bill in Chancery, filed and exhibited in said Court, against them by The Paducah Railway Company, a corporation organized by and existing under the laws of the State of Kentucky with its principal office and place of business at Paducah, —— citizen of and resident in the State of ——.

Hereof you are not to fail under the penalty of the law thence ensuing.

Your will make due return of this writ on or before the 18th day of October, A. D., 1920.

Witness the Honorable Walter Evans, Judge of the District Court of the United States, for the Western District of Kentucky, this 28th day of September A. D., 1920, and in the 145th year of the Independence of the United States of America.

Attest:
[SEAL.]

A. G. ROLAND,
Clerk,
By W. A. BLACKBURN,
Deputy.

43 *Memorandum.*

The said defendants are required to file their answer or other defense in this suit in the Clerk's Office of said Court on or before the twentieth day after service of this subpœna, excluding the day thereof, otherwise the said bill may be taken pro confesso.

A. G. RONALD,
Clerk.
By W. A. BLACKBURN,
Deputy.

Marshal's Return.

Filed October 11th, 1920.

Received this Writ on the 29th day of September A. D., 1920. And on the 4th day of October A. D., 1920, I executed same at Paducah by delivering a true copy of the within summons to Frederick W. Katterjohn, Mayor of the City of Paducah, Ky., and a true copy of same to Frederick W. Katterjohn for the City of Paducah and true copy of same to W. V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, Richard Wynn Tully, Commissioner of Public Finance, James M. Eaker, Commissioner of Public Works, as within commanded.

This Oct. 4th, 1920.

E. H. JAMES,
U. S. Marshal W. D. Ky.,
By R. W. KIMBELL,
Deputy.

Mileage ....
Service ....

$.....

44 The following is a notice filed September 30th, 1920.

In the District Court of the United States of the Western District of Kentucky, at Paducah.

THE PADUCAH RAILWAY COMPANY, a Corporation Organized by and Existing under the Laws of the State of Kentucky, with Its Principal Office and Place of Business at Paducah, Complainant,

vs.

CITY OF PADUCAH, a Municipal Corporation of Kentucky, and Frederick W. Katterjohn, Mayor of Paducah; William V. Eaton, Commissioner of Public Safety; Michael Williams, Commissioner of Public Property; Richard Wynn Tully, Commissioner of Public Finance; James M. Acre, Commissioner of Public Works, Composing the Mayor and Board of Commissioners of the City of Paducah, Defendants.

(*Notice.*)

The defendants, City of Paducah, Frederick W. Katterjohn, William V. Eaton, Michael Williams, Richard Wynn Tully, and James M. Acre, Mayor and Commissioners of the City of Paducah, will take notice that the Paducah Railway Company will upon Thursday, the 30th day of September, at ten o'clock A. M., in the District Court Room of the District Court of the United States for the Western Dis-

trict of Kentucky at Louisville, move the Honorable Walter Evans Judge of the District Court of the United States for the Western District of Kentucky, for a temporary injunction restraining and enjoining the defendants, and each of them from enforcing or attempting to enforce an ordinance passed by the Mayor and Board of Commissioners of the City of Paducah, on the 20th day of September, 1920, entitled, "An ordinance fixing the rate of fares to be charged by electric street railway and other persons within the City of Paducah, and providing penalties for violation thereof," and
45 enjoining and restraining said defendants and each of them from instituting or causing to be instituted any prosecution against the Paducah Railway Company for violation of Section Two of said Ordinance. At which time and place you and each of you can be present and heard if you so desire.

This the 28th day of September, 1920.

PADUCAH RAILWAY COMPANY,
By WHEELER & HUGHES, *Attorneys.*

Marshal's Return.

Received the within notice and five copies at Paducah, Kentucky, the 28th day of September, 1920. Executed at Paducah, Kentucky, on the 28th day of September, 1920, on the City of Paducah by delivering to William V. Eaton, Mayor Pro Tem. of said City a true copy of the within, Frederick W. Katterjohn, Mayor of said City being absent from Paducah, on said date; further executed on William V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, Richard Wynn Tully, Commissioner of Public Finance and James M. Acre, Commissioner of Public Works, by delivering to each a true copy of the within, this the 28th day of September, 1920.

E. H. JAMES,
U. S. Marshal,
By R. W. KIMBELL,
Deputy.

46 The following is the degree granting a temporary injunction, filed September 30th, 1920.

In the United States District Court for the Western District of Kentucky, at Paducah.

No. 11.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH and Others, Defendants.

Decree Granting a Temporary Injunction.

This day came the complainant, Paducah Railway Company, by Chas. K. Wheeler, D. H. Hughes and James G. Wheeler, its coun

sel, and came also the defendants, Frederick W. Katterjohn, Mayor of Paducah, William V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, Richard Wynn Tully, Commissioner of Public Finance, and James M. Eaker, Commissioner of Public Works, by their counsel, Mocquot, Berry & Reed, and pursuant to notice in writing duly given and filed herewith, the complainant moved the Court for a temporary injunction restraining and enjoining the defendants, and each of them, from enforcing or attempting to enforce an ordinance passed by the Mayor and Board of Commissioners of the City of Paducah, on the 20th day of September, 1920, entitled "An ordinance fixing the rate of fares to be charged by electric street railways and other persons within the City of Paducah, and providing penalties for violation thereof," and enjoining and restraining said defendants and each of them from instituting or causing to be instituted any prosecution against the Paducah Railway Company for violation of section two of said ordinance.

Defendants, by their counsel, objected to the said motion and to the granting of the temporary injunction prayed for by the
47 complainant, and the Court, having heard the arguments of the respective counsel, delivered its opinion in writing thereon which is filed, and pursuant to the said opinion it is now ordered, adjudged and decreed by the Court that the said motion should be and accordingly it is sustained.

And it clearly appearing from the specific facts stated in the verified bill of complaint and not denied, that great and irreparable injury and damage may otherwise be brought upon the complainant, its officers, agents and employees, it is further ordered, adjudged and decreed by the Court that until its further order or decree in this action and defendants, Frederick W. Katterjohn, Mayor of Paducah, William V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, Richard Wynn Tully, Commissioner of Public Finance, and James M. Eaker, Commissioner of Public Works, and each and all of them are hereby enjoined from in any manner enforcing or attempting to enforce the provisions of the said ordinance so passed and adopted by the defendants on September 20th, 1920, and fully set forth in the Bill of Complaint, until the further order of the court herein.

The defendants, or either of them, is given leave upon reasonable notice to the complainant to move the Court at any time to set aside or modify this decree.

A copy of this decree when served upon the several defendants herein named shall operate and have the effect of a formal writ of tmporary injunction within the terms of this decree.

WALTER EVANS,
Judge.

Enter.

Sept. 30th, 1920.

48 The following is the opinion on motion for a temporary injunction, filed September 30th, 1920.

In the United States District Court for the Western District of Kentucky, at Paducah.

PADUCAH RAILWAY COMPANY

vs.

CITY OF PADUCAH and Others.

Opinion on Motion for a Temporary Injunction.

The Bill of Complaint was filed on Sept. 28th, 1920. It seeks to enjoin the enforcement of an ordinance adopted by the defendants, the Mayor and Commissioners of the City of Paducah, on the 20th day of the same month. Notice was given by the complainant to all the defendants of the motion made today for a temporary injunction and it was argued by counsel for all parties.

The bill sets forth the facts in much detail. A condensed statement of them is all that is necessary at this stage of the case.

The predecessor of the plaintiff had failed to accomplish either an adequate transportation system for the city or the making of anything resembling profit for itself. In an effort to achieve something better for all concerned after the old street car company's property had been disposed of at a forced sale, the plaintiff, the new owner, and the defendants hit upon a plan whereby it was agreed between them that the plaintiff should operate its street car system in Paducah from October 1st, 1919, to September 30th, 1920, inclusive, and that the rates to be charged should be 6 cents for an adult and half fare for children, and that at the end of the year, viz., on or after September 30th, 1920, the plaintiff should promptly make to the defendants a verified statement in writing showing the exact

49 earnings of the company and all its expenses during the year, and that if these earnings were more than adequate to pay all of the expenses of operation, taxes and repairs and a reasonable return on the money invested, then any surplus should be paid over to the defendant city. For the purpose of ascertaining the facts the plaintiff was required to make a full and verified statement of all its earnings on one hand and of all its expenses, repairs, &c., on the other. In this situation each party should select a representative residing outside the city with another one to be selected by these two. In that way the facts were to be ascertained upon which to determine what was proper to be done. The whole plan seems designed to provide a fair way of ascertaining what was best in the interest of a just settlement of any difficulties.

What purports to be a verified statement by the complainant of earnings, expenses, &c., as stipulated or required by the plan agreed upon for the year beginning October 1st, 1919, and ending September 30th, 1920, both dates inclusive, was given in writing to the

defendants on September 17th, 1920, and in which was announced plaintiff's purpose to increase fares to 10 cents for adults and 5 for children. This statement shows on its face that for a period of 15 days, embracing the time from Sept. 16th to Sept. 30th inclusive, both earnings and expenses were "estimated" only, and it may well be doubted whether this came up to the requirements of the plan which had been agreed upon in 1919 and fully described in the bill. However, without waiting until a statement covering a showing of the actual earnings and expenses of plaintiffs as distinguished from one that at least in part was an estimate merely, could be made in due form on or after October 1st, 1920, and without in any way acting upon the statement submitted or giving notice of any objections they, the defendants, the Mayor and Commissioners
50 of the city, passed and on September 20th, 1920, adopted the ordinance referred to, and the carrying of which into effect is sought to be enjoined upon the ground that its enforcement would be violative of the Constitution of the United States. While all the parties to the action may have acted somewhat prematurely, the act of the defendants is the one which is now to be subjected to the tests upon which its validity is to be ascertained.

From the facts stated in the bill we repeat it would seem to be clear that it was the intention alike of the plaintiff and of the defendants to provide a plan whereby justice both to the plaintiff and the citizens of Paducah could be ascertained and provided for.

Two propositions are equally clear and obvious, viz., 1st, that the people of the city need means of transportation, the charge for which it is the right of the city to see are not made extortionate nor unfair, and, 2nd, that those who put their money into a plan for providing the transportation the population needs are fairly and justly entitled to be allowed to charge a rate of compensation therefor which will be adequate to pay the expenses thereof and in addition an amount sufficient to provide a fair return upon the money invested for that purpose. These views are obviously right and fair, and the constitutional law applicable to such a situation may be found to have been recently and clearly stated in cases like Detroit United Railway v. Detroit, 248 U. S., 429.

Unless these views are enforced in this case there will be a wrong done which will not be excusable, though the idea seems to prevail in Paducah and elsewhere that public service facilities shall be operated not to any extent in the interest of those who furnished the money to provide them but for the purposes of those who do not want the fair thing. A public service corporation like a street car company, whose plant has necessarily cost a large sum of money, is entitled to a fair return upon the money spent, and neither
51 the selfishness of those who use them nor any sentimental considerations which might influence those who may have power fairly and with constitutional restrictions in control to regulate rates, should be allowed to prevent the just and fair results demanded by the rules of law laid down in the decisions referred to. Among those rules the one which is fundamental is that the prop-

erty of a citizen shall not be taken for the use of the public without just compensation. This is what is guaranteed by the Federal Constitution in the provisions thereof which are invoked here, and as the ordinance here called in question would result in the forbidden thing, it violates the constitutional rights of the plaintiff.

There is not reason apparent why the plan agreed upon by the parties here should not be given a fair and adequate trial and the manifest intention to do fairly by both sides evidenced by the agreed plan be carried out, though possibly it might be well to make an effort to do that by a further statement and a new start by the plaintiff.

In connection with this observation we may add that we do not intend by this opinion to pass upon any propositions except those specifically ruled upon.

The temporary injunction prayed for will be granted.

Sept. 30th, 1920.

WALTER EVANS,
Judge.

52 The following is copy of decree granting a temporary injunction, filed September 30th, 1920, with marshal's return of service:

In the United States District Court for the Western District of Kentucky at Paducah.

No. 11.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH and Others, Defendants.

Decree Granting a Temporary Injunction.

This day came the complainant, Paducah Railway Company, by Chas. K. Wheeler, D. H. Hughes and James G. Wheeler, its counsel, and came also the defendants, Frederick W. Katterjohn, Mayor of Paducah, William V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, Richard Wynn Tully, Commissioner of Public Finance, and James M. Eaker, Commissioner of Public Works, by their counsel, Mocquot, Berry & Reed, and pursuant to notice in writing duly given and filed herewith, the complainant moved the Court for a temporary injunction restraining and enjoining the defendants, and each of them, from enforcing or attempting to enforce an ordinance passed by the Mayor and Board of Commissioners of the City of Paducah, on the 20th. day of September, 1920, entitled, "an ordinance fixing the rate of fares to be charged by Electric Street Railways and other Persons within the city of Paducah, and providing penalties for violation thereof," and enjoining and restraining said defendants and each of them

om instituting or causing to be instituted any prosecution against
ie Paducah Railway Company for violation of section two of said
rdinance.

Defendants, by their counsel, objected to the said motion and to
the granting of the temporary injunction prayed for by the
3 complainant, and the Court, having heard the arguments of
the respective counsel, delivered its opinion in writing
iereon, which is filed, and pursuant to the said opinion it is now
rdered, adjudged and decreed by the Court that the said motion
iould be and accordingly it is sustained.

And it clearly appearing from the specific facts stated in the
erified bill of complaint and not denied, that great and irreparable
njury and damage may otherwise be brought upon the complainant,
is officers, agents and employees, it is further ordered, adjudged
nd decreed by the Court that until its further order or decree in
his action and defendants, Frederick W. Katterjohn, Mayor of
'aducah, William V. Eaton, Commissioner of Public Safety,
lichael Williams, Commissioner of Public Property, Richard Wynn
Tully, Commissioner of Public Finance, and James M. Eaker, Com-
nissioner of Public Works, and each and all of them are hereby
njoined from in any manner enforcing or attempting to enforce
he provisions of the said ordinance so passed and adopted by the
lefendants on September 20th, 1920, and fully set forth in the
3ill of Complaint, until the further order of the Court herein.

The defendants, or either of them, is given leave upon reasonable
iotice to the complainant to move the Court at any time to set aside
)r modify this decree.

A copy of this decree when served upon the several defendants
ierein named shall operate and have the effect of a formal writ of
emporary injunction within the terms of this decree.

WALTER EVANS,
Judge.

Enter.
Sept. 30th, 1920.

54 UNITED STATES OF AMERICA,
Western District of Kentucky, ss:

I, A. G. Ronald, Clerk of the District Court of the United States,
for said Western District of Kentucky, do hereby certify the above
and foregoing to be a true and complete copy of the Decree grant-
ing a Temporary Injunction made and entered in said Court, on
the 30th day of September, A. D., 1920, in the cause wherein
Paducah Railway Company the complainant and City of Paducah
and others the Defendants, as the same appears from the original
now remaining in my custody and control.

In Testimony whereof, I have hereunto set my hand and affixed
the seal of said Court, this 4th day of October, A. D. 1920.

[SEAL.] A. G. RONALD,
Clerk,
By W. A. BLACKBURN.
D. C.

Marshal's Return.

Received the within injunction and 5 copies at Paducah, Ky., Oct. 4th, 1920 and executed same at Paducah Oct. 4th, 1920 on the within named F. W. Katterjohn, Mayor of the City of Paducah, Ky., and W. V. Eaton, Commissioner of Public Safety, M. W. Williams, Comr. of Public Property, R. Wynn Tully, Comr. of Public Finance and James W. Eaker, Comr. of Public Works by delivering a true copy hereof to each of them.

This Oct. 4th, 1920.

E. H. JAMES,
U. S. Marshal,
By R. W. KIMBELL,
Deputy.

55 The following is an order filing amended bill of Complaint, Filed October 13th, 1920.

In the District Court of the United States for the Western District of Kentucky, at Paducah.

No. 11.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH et al., Defendants.

Order Filing Amended Bill of Complaint.

This day came the Complainant, Paducah Railway Company by its counsel, Wheeler & Hughes and tendered an Amended Bill of Complaint herein which is now ordered filed.

WALTER EVANS,
Judge.

Open Court and Enter.
October 13, 1920.

56 The following is the amended bill of complaint filed October 13th, 1920.

In the District Court of the United States for the Western District of Kentucky, at Paducah.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH, FREDERICK W. KATTERJOHN, Mayor; WILLIAM V. Eaton, Commissioner of Public Safety; Richard Wynn Tulley, Commissioner of Public Finance; Michael Williams, Commissioner of Public Property; James W. Acre, Commissioner of Public Works, Composing the Mayor and Board of Commissioners of the City of Paducah, Defendants.

Amended Bill of Complaint.

The Paducah Railway Company, before answer amends its bill of complaint so as to state that since the filing of its original bill herein, it has ascertained the exact amount of the gross revenue received by it in the conduct of operating a street car system in Paducah for the year ending September 30, 1920, and it has likewise ascertained with accuracy the total operating cost of said system during said period. The total revenue from all sources received by your orator during said period, is One Hundred Fifty Nine Thousand, Four Hundred Twenty Four ($159,424.86) Dollars and Eighty Six Cents, and the total operating cost of its street car system during said period, is One Hundred Twenty Nine Thousand, Five Hundred Ninety ($129,590.95) Dollars and Ninety Five Cents; that the amount it is entitled to receive to care for depreciation of its property, upon the value thereof, as fixed in its original bill, is Thirty Four Thousand, One Hundred Seventy Two ($34,172.12) Dollars and Twelve Cents, and the amount of interest on invested capital at six (6) per cent is Fifty One Thousand, Two Hundred Fifty Eight ($51,258.18) Dollars and Eighteen Cents, and the amount required for interest on the investment at eight (8) per cent during
57 said period amounts to Sixty Eight Thousand, Three Hundred Forty four ($68,344.24) Dollars and Twenty Four Cents, leaving a deficit of Seventy Two Thousand, Six Hundred Eighty Two ($72,682.45) Dollars and Forty Five Cents.

On the 13th of October your orator, in writing communicated to the City of Paducah and its officials, its experience in operating said system of street Railways in said City of Paducah, for the period ending September 30, 1920, a copy of which communication is hereto attached and marked for identification, "X," and asks that same be read as a part of its amended bill and at the same time it furnished to the said defendants, a detailed statement of receipts and expenditures for the operation of its street car system, a copy of which statement is filed herewith as a part hereof marked for identification, "Y."

Wherefore complainant prays for leave to file this, its amended bill of complaint, and as in its original bill, and for all other and further relief to which in law or equity it may be entitled to receive.

CHAS. K. WHEELER.
D. H. HUGHES.
JAMES G. WHEELER.

A. S. Nichols says he is Manager of the Paducah Railway Company whose chief officers and agents are now absent from the County of McCracken and he believes the statements in this amended bill of complaint to be true.

A. S. NICOL.

Sworn and subscribed to before me this the 13th day of October, 1920.

A. G. RONALD,
Clerk,
By W. A. BLACKBURN,
D. C.

58 EXHIBIT "X."

Oct. 12, 1920.

Hon. F. W. Katterjohn and Board of Commissioners, City of Paducah, Paducah, Ky.

DEAR SIRS:

We beg to acknowledge receipt of your letter of the 7th inst., and your request for a statement of the receipts and disbursements of this Company for the year ending September 30, 1920. Also a statement of the manner in which we arrive at the valuation which we assert.

For the purpose of uniformity we submit an accurate statement of the subdivision of our operating expenses and earnings, together with the taxes and fixed charges in form similar to that submitted with our letter of September 17, 1920, which will make ready comparison possible.

We also submit a detail of all earnings and operating expenses for the year in question.

The valuation which we assert, i. e., $854,303.00, is based upon an appraisal by competent engineers who set the value computed on 1913 costs as $825,000.00, at which figure the property was purchased from the Paducah Traction Company by the Paducah Railway Company. Between the date of purchase, October 1, 1919, and July 30, 1920, new construction to the amount of $29,303.00 has been added to the original investment, making a total of $854,303.00. The detail of this appraisal is not available but if your Honorable Board questions the accuracy of this valuation we respectfully suggest that Article XV of the franchise under which this Company is operating, provides the method by which the value may be ascertained.

The Company complying with the terms of the franchise will enter heartily into the purpose of appraising the property if your Honorable Board decides it to be in the interest of the City so to do.

59 The Company desires to express its attitude in stating that it will be glad to permit an examination of its books or to furnish any information that will aid your Honorable Board in an earnest inquiry concerning the accuracy of these statements submitted.

Yours very truly,

A. S. NICHOLS,
Manager.

A. S. N./B. W.
C. C. to S. & W.
C. C. to D. D.
C. C. to C. K. W.

60 EXHIBIT "Y."

Paducah Railway Company, Inc.

Statement Showing Earnings from Operation, 12 Months Ending Sept. 30, 1920.

Cash Fare, Six Cents (6¢).

Revenue from transportation:	
Acct. #1 Passenger Revenue	157,971.84
Special Car	412.21
Total revenue from transportation	158,384.05
Revenue from operation other than transportation:	
Acct. #10—Station & Car Privileges	634.28
Acct. #19—Miscellaneous	406.53
Total revenue from operation other than transportation	1,040.81
Total revenues	159,424.86
Operating expenses:	
Way and Structures	7,270.12
Total Equipment	17,198.03
Total Traffic	6,778.74
Conducting Transportation	59,737.01
Injuries & Damages	12,889.70
General & Miscellaneous	19,826.99
Total operating expenses	123,700.59

Taxes	5,890.36
Depreciation 4% on $854,303.00	34,172.12
	163,763.07
Balance available for return on capital	4,338.21
Amount required to provide an 8% return on investment as of Sept. 30–'20	68,344.24
Amount by which actual earnings did not meet requirement of investment	72,682.45
Number of Passengers Carried	3,059,312
Average Fare	5.16¢
Average cost per passenger	7.59¢

Railway Expenses Paducah Railway Co., Incorporated.

Sheet No. 1.

Operating expenses.	Per car mile (cents).	12 months ending Sept. 30, 1920.	Previous year.	For — months. Current year.	For — months. Previous year.
Way and Structures:					
1. Superintendence of Way and Structures	.....	771.94	.....	.....	.....
2. Ballast	.....	87.73	.....	.....	.....
3. Ties	.....	.....	.....	.....	.....
4. Rails	.....	33.40	.....	.....	.....
5. Rail Fastenings and Joints	.....	32.62	.....	.....	.....
6. Special Work	.....	9.11	.....	.....	.....
7. Underground Construction	.....	.....	.....	.....	.....
8. Roadway and Track Labor	.....	1,842.24	.....	.....	.....
9. Paving	.....	19.40	.....	.....	.....
10. Miscellaneous Roadway & Track Expenses	.....	179.77	.....	.....	.....
11. Cleaning and Sanding Track	.....	1,347.58	.....	.....	.....
12. Removal of Snow, Ice and Sand	.....	103.58	.....	.....	.....
13. Tunnels	.....	.....	.....	.....	.....
14. Elevated Structures and Foundations	.....	.....	.....	.....	.....
15. Bridges, Trestles and Culverts	.....	.....	.....	.....	.....

Railway Expenses Paducah Railway Co.—Continued.

Operating expenses.	Per car mile (cents).	12 months ending Sept. 30, 1920.	Previous year.	For — months. Current year.	For — months. Previous year.
16. Crossings, Fences, Cattle Guards & Signs	.....	9.62	.....	.....	.....
17. Signal and Interlocking Systems	.....	.....	.....	.....	.....
18. Telephone and Telegraph Systems	.....	.....	.....	.....	.....
19. Other Miscellaneous Way Expenses	.....	.....	.....	.....	.....
20. Poles and Fixtures	.....	269.37	.....	.....	.....
21. Underground Conduits	.....	.....	.....	.....	.....
22. Transmission System	.....	.....	.....	.....	.....
23. Distribution System	.....	1,488.67	.....	.....	.....
24. Miscellaneous Electric Line Expenses	.....	22.00	.....	.....	.....
25. Buildings and Structures	.....	1,053.09	.....	.....	.....
27. Other Operations—Dr	.....	.....	.....	.....	.....
28. Other Operations—Cr.	.....	.....	.....	.....	.....
Total Way and Structures	.....	7,270.12	.....	.....	.....
Equipment:					
29. Superintendence of Equipment.	.....	939.50	.....	.....	.....
30. Power-Plant Equipment	.....	.....	.....	.....	.....
31. Substation Equipment	.....	.....	.....	.....	.....

32. Passenger and Combination Cars	.....	9,822.16	.....	.....	.....
33. Freight, Express, and Mail Cars	.....	.....	.....	.....	.....
34. Locomotives	.....	.....	.....	.....	.....
35. Service Cars	.....	59.02	.....	.....	.....
36. Electric Equipment of Cars	.....	4,206.42	.....	.....	.....
37. Electric Equipment of Locomotives	.....	.....	.....	.....	.....
38. Shop Machinery and Tools	.....	580.74	.....	.....	.....
39. Shop Expenses	.....	1,590.19	.....	.....	.....
40. Horses and Vehicles	.....	.....	.....	.....	.....
41. Other Miscellaneous Equipment Expenses	.....	.....	.....	.....	.....
43. Other Operations—Dr.	.....	.....	.....	.....	.....
44. Other Operations—Cr.	.....	.....	.....	.....	.....
Total Equipment	.....	17,198.03	.....	.....	.....
Total Maintenance Way & Equip.	.....	24,468.15	.....	.....	.....
Traffic:					
45. Superintendence and Solicitation	.....	.....	.....	.....	.....
46. Advertising	.....	6,778.74	.....	.....	.....
47. Miscellaneous Traffic Expenses	.....	.....	.....	.....	.....
Total Traffic	.....	6,778.74	.....	.....	.....

Sheet No. 2.

Operating expenses.	Per car mile (cents).	12 months ending Sept. 30, 1920.	Previous year.	For — months. Current year.	For — months. Previous year.
Conduct'g Transportation:					
48. Superintendence of Transportation	.....	4,289.20	.....	.....	.....
Power:					
49. Power-Plant Employees	.....	.....	.....	.....	.....
50. Substation Employees	.....	.....	.....	.....	.....
51. Fuel for Power	.....	.....	.....	.....	.....
52. Water for Power	.....	.....	.....	.....	.....
53. Lubricants for Power	.....	.....	.....	.....	.....
54. Misc. Power-Plant Supplies and penses	.....	.....	.....	.....	.....
55. Substation Supplies and Expenses	.....	.....	.....	.....	.....
56. Power Purchased	.....	16,970.96	.....	.....	.....
57. Power Exchanged—Balance	.....	.....	.....	.....	.....
58. Other Operations—Dr.	.....	.....	.....	.....	.....
59. Other Operations—Cr.	.....	.....	.....	.....	.....
Total Power	.....	16,970.96	.....	.....	.....

Operation of Cars:					
60. Pass. Conductors, Motormen & Trainmen	.....	29,048.49	.....	.....	.....
61. Frt. & Exp. Cond., Motormen & Trainmen	.....	.....	.....	.....	.....
62. Miscellaneous Car-Service Employees	.....	.....	.....	.....	.....
63. Miscellaneous Car-Service Expenses	.....	2,348.07	.....	.....	.....
64. Station Employees	.....	.....	.....	.....	.....
65. Station Expenses	.....	46.58	.....	.....	.....
66. Carhouse Employees	.....	6,100.22	.....	.....	.....
67. Carhouse Expenses	.....	756.87	.....	.....	.....
68. Oper. of Signal & Interlocking Systems	.....	.....	.....	.....	.....
69. Oper. of Telephone & Telegraph Systems	.....	.....	.....	.....	.....
70. Express & Freight Collections & Delivery	.....	.....	.....	.....	.....
71. Loss and Damage	.....	.....	.....	.....	.....
72. Other Transportation Expenses.	.....	176.62	.....	.....	.....
Total Operation of Cars	.....	38,476.85	.....	.....	.....
Total Conduct'g Transportation	.....	59,737.01	.....	.....	.....

Railway Expenses Paducah Railway Co.—Continued.

Operating expenses.	Per car mile (cents).	12 months ending Sept. 30, 1920.	Previous year.	For — months. Current year.	For — months. Previous year.
General & Miscellaneous:					
73. Salaries & Expenses of General Officers	.....	6,254.98	.....	.....	.....
74. Salaries & Exp. of General Office Clerks	.....	5,867.80	.....	.....	.....
75. General Office Supplies and Expenses	.....	2,180.36	.....	.....	.....
76. Law Expenses	.....	583.63	.....	.....	.....
77. Relief Department Expenses	.....	.....	.....	.....	.....
78. Pensions	.....	.....	.....	.....	.....
79. Miscellaneous General Expenses	.....	2,669.66	.....	.....	.....
80. Other Operations—Dr.	.....	.....	.....	.....	.....
81. Other Operations—Cr.	.....	.....	.....	.....	.....
Undistributed Accounts:					
82. Injuries and Damages	.....	12,889.70	.....	.....	.....
83. Insurance	.....	714.13	.....	.....	.....
84. Stationery and Printing	.....	1,278.89	.....	.....	.....
85. Store Expenses	.....	277.54	.....	.....	.....
86. Stable Expenses	.....	.....	.....	.....	.....
87. Rent of Tracks and Terminals	.....	.....	.....	.....	.....
88. Rent of Equipment	.....	.....	.....	.....	.....
Total General and Miscellaneous	.....	32,716.69	.....	.....	.....

Summary.

Total Way & Struct. (Maint.) Sheet 1	.....	7,270.12	.....	.....	.....
Total Equipment (Maint.) " 1	.....	17,198.03	.....	.....	.....
Total Traffic Sheet 1.....	.....	6,778.74	.....	.....	.....
Total Conduct'g Transportation.....	.....	59,737.01	.....	.....	.....
Total General and Miscellaneous....	.....	32,716.69	.....	.....	.....
Total Operating Expenses...	.....	123,700.59	.....	.....	.....

KW-H Generated and Purchased.
KW-H from Light and Power Department.
Car Miles.

63 The following is an answer filed October 23rd, 1920.

In the District Court of the United States for the Western District of Kentucky, at Paducah.

The Bill of Complaint of

THE PADUCAH RAILWAY COMPANY, a Corporation Organized by and Existing under the Laws of the State of Kentucky, with Its Principal Office or Place of Business at Paducah, Complainant,

vs.

CITY OF PADUCAH, a Municipal Corporation of Kentucky, and Frederick W. Katterjohn, Mayor of Paducah; William V. Eaton, Commissioner of Public Safety; Michael Williams, Commissioner of Public Property; Richard Wynn Tully, Commissioner of Public Finance, and James W. Eaker, Commissioner of Public Works, Composing the Mayor and Board of Commissioner- of the City of Paducah, Defendants.

Answer.

And now come the respondents and defendants in the above entitled action, and for answer and response to the Bill of Equity filed herein by the complainants, said defendants and respondents say,

That they have no reason to doubt that the figures set out in complainant's bill to the effect that its predecessor, the Paducah Traction Company operated the same track mileage in 1909, and that the receipts for twelve months in 1909 was $111,268.13 gross revenue; that its operating expenses for said year may have been $74,073.77, and the taxes paid for that year may have been $5,183.51, but say this was the total expense, and the total expense to the operation of said system, as the interest paid by said Company on its outstanding bonds is not, and was not a legitimate charge to be taken into consideration in arriving at a just conclusion as to whether there was or was not a deficit, and that instead of there being a deficit
64 of $16,489.31 for said year, there was an excess of receipts over disbursements for operating expenses, including taxes, of $32,011.85, and for the year 1910, instead of there having been a deficit, as alleged, there was an excess of receipts over legitimate expenditures, of $33,626.81, and for the year 1911, instead of there being a deficit, as alleged, there was an excess of receipts, over legitimate expenditures, of $41,915.16 and for the year 1912, there was an excess of receipts, over legitimate disbursements, instead of a deficit as alleged, of $33,642.45, and for the year 1913, instead of there being a deficit, as alleged, there was an excess of receipts, over legitimate expenses, of $30,230.74, and for the year 1914, instead of there being a deficit as alleged, there was an excess of receipts, over legitimate expenses, of $34,678.37, and for the year 1915, instead of there being a deficit, as alleged, there was an excess of re-

ceipts, over legitimate expenses, of $22,848.32, and for the year 1916, instead of there being a deficit, as alleged, there was an excess of receipts, over legitimate expenses, of $29,198.45, and for the year 1917, instead of there being a deficit, as alleged, there was an excess of receipts, over legitimate expenses, of $20,642.72, and for the year 1918, from January 1, to September 1, instead of there being a deficit, as alleged, there was an excess of receipts, over legitimate expenses of $15,938.51.

That it may be true that said Paducah Traction Company could not meet its interest on its bonds, and the principal of one of its bond issues which matured in said year, as alleged in the petition or bill of complaint, as said Company had been bonded by its owners and promoters far beyond its value, and in addition to such bonded indebtedness, far beyond its value, it had issued outstanding large issues of common and preferred stock, which had been sold to and held by various stockholders throughout the country, the elimination of whom as such, was at this time a thing to be desired, and said
65 concern did go into the hands of a Receiver at the instigation of those in control of same, and was operated by said receiver appointed by McCracken Circuit Court, and under the supervision of the Court, from September 1, 1918, until September 31, 1919, when it became the property of the complainant.

Your respondents further say that the complainant may have paid $825,000.00 for said property when it came into possession of same, but if such was done then there was paid for such property by complainant, far more than its value at that time or since. That at the time the complainant became the owner thereof, said property, in its entirety, was not worth more than $450,000.00, and has never been of any greater value since, except as such improvements may have been made thereon since the purchase, has added to the value, and there may have been expended on said system by complainant since its purchase of same, $39,702.02, but if so, it did not and has not added to the value of same exceeding $15,000.00, and while the present cost of such system to the complainant may, as stated, be $864,702.02, yet its present value, and at the time when this bill was filed, did not exceed $465,000.00, including everything.

Paragraph 11.

Now defendants and respondents, further pleading to the bill filed in this case, say that on the 29th of April, 1919, the City of Paducah did pass an Ordinance entitled, "An ordinance creating a franchise to acquire, construct, operate and maintain an electric street railway over certain streets in the city of Paducah, and provide for the sale thereof," and said franchise was in accordance with the provisions of said ordinance and the laws of Kentucky, exposed to sale at public outcry at ten o'clock on June 6th, 1919, and same was bought by one Alfred S. Nichols, and it is true that same was, by the said Nichols, signed and transferred to Stone & Webster, but it is
66 untrue, and it is denied that Stone & Webster thereafter transferred or assigned same to complainant so as to vest in the

complainant any rights guaranteed to the owner of the franchise under said ordinance, and it is denied that the complainant now has any right under said ordinance, or a right to exercise any of the rights as owner or holder of said franchise under the terms of said ordinance, because your respondents and defendants herein say that under Section one of the ordinance in question and in said Section One, the following words are contained and limitation laid, to-wit:

"Before becoming vested with title, the purchaser shall accept the terms and conditions of this franchise in writing, and when so accepted the same shall inure to the successor and assigns of the purchaser hereunder, but no transfer or assignment of the rights or privileges granted herein shall be made by the purchaser until and unless he shall notify the Commissioners of the City of Paducah of such sale and transfer."

The respondents and defendants state that while said franchise was purchased by said Alfred S. Nichols, who did file, as required, a written acceptance of the terms thereof, and while it is true that said Alfred S. Nichols did transfer and assign the rights and privileges which came to him by virtue of said purchase to Stone and Webster, and did notify the Commissioners of the City of Paducah of such assignment and transfer, which did, by such act, vest in Stone & Webster the rights as owners of said franchise, yet the said Stone & Webster at no time until now has ever notified the City of Paducah, or the Commissioners of the City of Paducah, or the Mayor of the City of Paducah, or given any notice at all that they had sold or transferred their rights to the complainant. Therefore, it is claimed and charged by the respondents and defendants that no rights are now in the said complainant, in so far as said franchise is concerned, nor have they any rights under said ordinance, or under said franchise granted thereby. Therefore, it is alleged and claimed, and now plead, that the complainant, having no right, contractual or otherwise, cannot, in law or in equity, maintain this action against the defendants or either of them, and their bill should be dismissed.

67 Further responding and answering the allegations of complainant's bill, the defendants say it is untrue, and they deny that the complainant commenced operating under said ordinance on the first of October, 1919, or at all, and denies that said complainant has ever at any time operated under said ordinance the franchise in any way at any time in any manner.

Paragraph III.

Further responding and answering the allegations of complainant's bill, and still adhering to and relying upon the defense as set out and alleged in paragraph two, it is denied that complainant at any time, ascertained from actual receipts and disbursements, that the fare fixed in the ordinance in question did not or could not yield a sum sufficient to pay operating expenses, taxes and interest on money

ıvested, and depreciation. While it may be true that the receipts or the year beginning October 1, 1919, and ending October 1, 1920, ere $160,084.79, it is denied that the operating expenses, including ıxes, were $129,918.55, or more than $80,000.00.

That 6% interest on the alleged capital invested, which by complainant is contended to be $864,702.02, would amount to $51,-82.12, but complainant, while entitled to receive a reasonable return n the value of the properties held by it in the operation of the ısiness in hand, is not entitled to receive such return on the capital ıvested, for it would not be equitable in arriving at what the general ıblic should be charged to calculate a reasonable return upon a ıd investment, but only on the reasonable value of such property ıvested in, and the reasonable actual value of the property belong-ıg to complainant, if it did belong to them, did not at the time of ıe purchase, if it did purchase same, and has at no time since, and oes not now, exceed $465,000.00. Therefore, a reasonable return ıereon would be 6% of such sum, or $27,900.00.

That, therefore, the income for the past year, ending October 1, 1920, being $160,084.79, and the operating expenses, including taxes, being not exceeding $80,000.00, and a reasonable interest on the actual value of the property invested in ing $29,700.00, the receipts therefore, over and above the operat-g expenses, tax and interest for the year mentioned is $50,184.79.

And now admitting that complainant is allowed to charge for or ceive, for the purpose of taking care of depreciation, some per-ntage, it is denied it is entitled to receive 4% in this connection, on 64,000.00, but would be reasonably entitled to receive no more an 2½% on the actual value of the property, $465,000.00, or $11,-0.00, which added to the above enumerated expenditures would ll leave to complainant on the receipts of 1920, ending October 1 excess profit of $38,934.79.

It is denied that a 6% return upon the invested capital is mani-ıtly or at all unfair or unjust to complainant, because such return far above the average net return on investments, and it is denied ıt because of any hazard of any such investment, or on account of ı life of the franchise, or on account of any calculated depreciation this property, complainant is entitled to earn 8% or more than ', and then only on the actual value of the property, and denies ıt 8% is a reasonable return, or if complainant were allowed to eive such percent its deficit would be $73,598.00, or any sum at all, ı on the contrary, there would be a large excess profit to said com-inant.

It is denied that so soon as it was ascertained from receipts and bursements that a six (6¢) cent fare would not produce a sum suffi-nt to pay operating expenses, taxes, depreciation and interest on ney invested (because no such ascertainment ever happened), or in ·suance to the provision of the 15th Section of the Franchise, com-inant addressed a letter of September 17, 1920, set out in its peti-ı or bill of complaint, to the Mayor or the Board of Commissioners, defendants say such letter was sent to the Mayor and Board of nmissioners, dated September 17, 1920, and accompanying same

was an alleged statement showing what purported to be gross
69 receipts, operating expenses and deficit for the year ending October 1, 1920, but it is denied that same was correct in any way, as has hereinbefore been set out.

It is denied that in compliance with provision of Section 15 of said ordinance a verified letter or communication was addressed to the Mayor and Board of Commissioners, showing gross receipts from all sources for twelve months, and disbursements, correctly, but a letter was received by said Mayor and Board of Commissioners, giving what purported to be such figures, but which were incorrect, as has hereinbefore been fully set out.

Further answering, the allegations of complainant's Bill, it is denied that a fare of ten (10) cents cash or seven and one-half (7½) cents when tokens are purchased, and one-half fare for children is reasonable or necessary, or that such fare will not yield a sum greater than is necessary to pay operating expenses, taxes, interest on investments, capital and depreciation.

That it is true that the ordinance referred to in complainant's bill entitled, "A ordinance fixing the rate of fares to be charged by electric street railways and other persons within the City of Paducah, and providing a penalty for the violation thereof" was passed, as alleged, but it is denied that said ordinance is unfair, confiscatory or oppressing, or compels complainant to maintain a street car system, or carry passengers at a loss, or without allowing it a fair rate for services rendered.

It is denied that said ordinance violates the 14th Amendment of the Constitution of the United States, in that it takes the property of the complainant without due process of law, or denies to it the equal protection of the law.

It is denied that said ordinance passed September 20, 1920, subjects complainant to annoyance and oppression, or will prevent it from successfully or properly operating its street car system. Denies that the revenue received by it for services rendered will not pay operating expenses, taxes, depreciation, or a fair return upon capital invested.

Denies that unless said Mayor and Board of Commissioners
70 be enjoined and restrained from putting said ordinance into effect, and be enjoined and restrained from interfering with complainant, it will be irreparably or at all damaged, or will lost the revenue needed by it to pay operating expenses, taxes, interest on investments and depreciation, or it will be constantly or at all interfered with or annoyed.

It is denied that the ordinance adopted September 20, 1920, undertakes to or does prescribe the fare to be charged by complainant for transportation of passengers over lines extending beyond the corporate limits of Paducah. Denies that if compelled to operate under said ordinance it will prove unremunerative, burdensome and oppressive, or will inevitably or at all result in a deficit to complainant of expenses over receipts, or that its taxes, interest on money invested and depreciation will amount, in the aggregate to more than it will receive for the services rendered, if the fare is permitted to be and remain at six (6) cents.

Denies that complainant pays any more for its power now than it has for several years past, including 1914, and denies that if complainant is compelled to operate under the provision of said ordinance complained of, it will be unremunerative, confiscatory or oppressive, or will take its property so devoted to public use without just compensation to it for the services rendered, or will deny to it the equal protection of the law.

It is further charged by the respondents and defendants herein, and stated as true, that the Paducah Traction Company, its immediate predecessor, as alleged in the Bill of Complaint, of complainant, in the ownership of the property in question, that for the year 1919 all of said properties were assessed by the owners thereof for taxation at the sums as follows, to-wit:

Real estate	$10,605.00
Personal property	67,755.00
Franchise, as fixed by the State Tax Commission for said year	32,788.00

71 making a total of the entire holdings, covering all the properties in question in this law suit of $111,148.00, and this is the same property now claimed by the complainant to be worth $864,000 00 in round numbers. And it is further stated as true that the same property for the year 1920 was listed for taxation and assessed by the owners thereof, as follows:

Real Estate	$10,605.00
Personal Property	71,205.00

a total of $81,810.00, the value of the franchise not having yet been fixed by the Tax Commission of the State for this year.

And now, the defendants and respondents, further answering the allegations of the amended petition of complainant filed October 13, 1920, denies that for the year ending September 30, 1920, the total operating cost of said system during said period was $129,590.95, or more than $80,000.00.

That the reiteration in this amended bill as to the amounts it stated in its original bill, as being necessary to be received to care for depreciation and for taxes, and the amount of interest on invested capital at 6% and at 8%, and the reiteration of the alleged deficit as stated in the original bill are correctly re-stated, in so far as the amounts claimed are concerned, but none of which are correct.

Wherefore, the respondents and defendants herein having stated their defense, and answered in full all of the allegations of complainant's bill, pray this Honorable Court to dismiss such bill and to render judgment in their behalf, for their costs in this action expended, and for all further relief to which they may be entitled, or in law or equity, and they will forever pray.

ROSCOE REED,
J. D. MOCQUOT,
W. A. BERRY,
Attorneys for Defendants.

Frederick W. Katterjohn states that he is one of the defendants in the above entitled action, and the Mayor of the City
72 of Paducah, and that he believes the statements contained in the foregoing answer are true.

F. W. KATTERJOHN.

Subscribed and sworn to before me by Frederick W. Katterjohn this 22nd day of October, 1920.

[SEAL.]

MARY L. BOBO,
N. P., M. C.

73 The following is the order entered Nov. 16th, 1920.

In the District Court of the United States for the Western District of Kentucky, at Paducah.

Equity. No. 11.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH, Defendants.

Order.

This day came the parties hereto, by counsel, and filed an agreement To take the proof in the case by depositions.

74 The following is an agreement filed November 16, 1920.

United States District Court.

PADUCAH RAILWAY COMPANY, Plaintiff,

vs.

CITY OF PADUCAH, Defendant.

Agreement.

The parties heretofore agree that the proof in this cause may be taken by depositions. When so taken the proof to be read by the Court to have the same effect as though the proof was heard orally by the Court.

PADUCAH RAILWAY COMPANY,
By WHEELER & HUGHES.
CITY OF PADUCAH,
By MOCQUOT, BERRY & REED,
Attys. for Defendant.

75 The following is the order entered April 19th, 1921.

In the District Court of the United States for the Western District of Kentucky, at Paducah.

Equity. No. 11.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH, &c., Defendant.

Order.

This day came the parties to this action, by counsel, and filed a stipulation, in writing, and pursuant to said stipulation filed, it is now ordered that this cause be, and it now is submitted to the Court for trial, subject to the rights of either party to file briefs on or before May 15, 1921.

76 The following is a stipulation filed April 19th, 1921.

United States District Court for the Western District of Kentucky, at Paducah.

PADUCAH RAILWAY COMPANY, Plaintiff,

vs.

CITY OF PADUCAH, &c., Defendants.

Stipulation.

It is stipulated between the parties to this action, that same be and is now submitted to the Court for trial, subject to the right of either party to file briefs on or before May 15, 1921.

CITY OF PADUCAH,
By ROSCOE REED,
J. D. MOCQUOT, &
W. A. BERRY,
Attys.
WHEELER & HUGHES,
Attorneys for Plaintiff.

77 The following is a stipulation filed May 25, 1921.

United States District Court for the Western District of Kentucky.

PADUCAH ELECTRIC COMPANY, Plaintiff,

vs.

CITY OF PADUCAH, Defendant.

Stipulation.

It is agreed between the parties hereto that the defendant may have until the first day of June to prepare brief to be presented to Judge Evans, and the plaintiff until the 15th of June, at which time said case will be submitted on said briefs for final hearing.

WHEELER & HUGHES,
Attys. for Plaintiff.
MOCQUOT, BERRY & REED,
Attys. for Defendant.

78 The following is the order filed May 25th, 1921.

In the District Court of the United States for the Western District of Kentucky, at Paducah.

PADUCAH ELECTRIC COMPANY, Plaintic,

vs.

CITY OF PADUCAH, Defendant.

Pursuant to the Stipulation this day filed, it is ordered that this cause be submitted, with leave to the defendant until the first day of June to file its brief and with leave to the plaintiff until the 15th day of June to file its brief.

WALTER EVANS,
Judge.

Open Court & Enter.
May 25, 1921.

79 The following is a stipulation file- May 31st, 1921:

United States District Court for the Western District of Kentucky.

The Bill of Complaint of

PADUCAH RAILWAY COMPANY, a Corporation Organized and Existing under the Laws of the State of Kentucky, wit- Its Principal Office and Place of Business at Paducah, Complainant,

vs.

CITY OF PADUCAH, a Municipal Corporation of Kentucky, and FREDerick W. Katterjohn, Mayor; Wm. V. Eaton, Commissioner of Public Safety; Michael Williams, Commissioner of Public Property; R. Wynn Tully, Commissioner of Public Finance; Jas. W. Eaker, Commissioner of Public Works, Composing the Mayor and Board of Commissioners of the City of Paducah, Ky., Defendants.

Stipulation.

Whereas, heretofore on or about the 25th day of May, an agreement was filed, or attempted to be filed in the case, the style of the case, however, being set *set* up as Paducah Electric Co., vs. the City of Paducah, it was intended that this agreement or stipulation should give to the defendant until the 1st day of June to prepare brief to be presented to the Court, and the plaintiff or complainant until the 15th of June, at which time said case would be submitted on said briefs for final hearing.

It is now agreed between the parties that a mistake in the caption of said case is waived and shall be treated as though the stipulation was filed in the correctly styled cause, as above set out.

WHEELER & HUGHES,
Attorneys for Complainant.
J. D. MOCQUOT,
W. A. BERRY AND
ROSCOE REED,
Attorneys for Defendants.

80 In the District Court of the United States for the Western District of Kentucky, at Paducah.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH, FREDERICK W. KATTERJOHN, WILLIAM V. Eaton, Michael Williams, Richard W. Tulley, James M. Eaker, Defendants.

Stipulation.

Complainant and defendants stipulate that the Paducah Railway Company was at the time of the institution of this action, has since

been and is now, the owner of the franchise under which it is operating an electric Street car system in Paducah, and this may be read as evidence of the complainant's right to operate its system of Street Cars under the franchise adopted by the City of Paducah on the 29th day of April, 1919, entitled: "An Ordinance Creating a Franchise to acquire, Construct, Operate and Maintain an Electric Street Railway Over Certain Streets in the City of Paducah, and Providing for the Sale Thereof," the identical Ordinance referred to in the Bill of Complaint.

June 9th, 1921.

PADUCAH RAILWAY COMPANY,
By WHEELER HUGHES,
W. A. BERRY,
J. D. MOCQUOT,
ROSCOE REED,
Attys. for Defendant.

81 The following is a decree filed June 25th, 1921.

In the United States District Court for the Western District of Kentucky, at Paducah.

Equity. No. 11.

PADUCAH RAILWAY COMPANY, Plaintiff,

vs.

CITY OF PADUCAH and Others, Defendants.

Decree.

This cause came on to be heard and was argued by counsel, and upon consideration thereof the Court delivered its opinion in writing, which is now filed, and upon consideration of the whole case, and pursuant to said opinion, it is now ordered, adjudged and decreed by the court as follows:

1st. That the defendants, City of Paducah, a municipal corporation of Kentucky, Frederick W. Katterjohn, Mayor of Paducah, William V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, Richard Wynn Tulley, Commissioner of Public Finance, James M. Eaker, Commissioner of Public Works, composing the Mayor and Board of Commissioners of the City of Paducah, are and each of them is enjoined and restrained from in any manner enforcing or attempting to enforce against the plaintiff or any of its officers, agents or employes, any of the provisions of the ordinance enacted, adopted and approved by the said defendants on or about the 21st day of September, 1921, and which ordinance is set out and copied in full into the plaintiff's petition or bill of complaint in this action, and,

2nd. That the plaintiff do have and recover of the said defendants its costs herein expended, as same may be property taxed by the Clerk.

Enter June 25th, 1921.

WALTER EVANS,
Judge.

82 The following is the opinion of final hearing, filed June 25th, 1921.

In the United States District Court for the Western District of Kentucky, at Paducah.

Equity. No. 11.

PADUCAH RAILWAY COMPANY

vs.

CITY OF PADUCAH and Others.

Opinion on Final Hearing.

The court looked into the case quite carefully when the motion for a preliminary injunction was before it last September. The only material change in the situation presented now on the final hearing is the testimony heard mainly on the question of the inadequate and confiscatory character of the rates fixed by the ordinance, the enforcement of which is sought to be enjoined. That ordinance was passed on the 21st day of September, 1920, and the rates fixed by it were as follows:

Cash fare for adults	6 cents.
For children under 12 years of age and over 5 years *years* of age	Half fare.
For children under 5 when accompanied by any person who is over 5 years of age	Nothing.

There seems to be no serious contention that the rates so fixed were sufficient to bring to the Plaintiff a fair return upon the value of its property used by the public. Without much, if any, claim by defendants that they are adequate for that purpose, their only insistence seems to be that there was a contract between the parties contained in the ordinance of April 4th, 1919, under which plaintiff purchased the railway plant in Paducah, and that when that is considered the plaintiff shows no grounds for the relief asked in its bill of complaint.

The material part of that ordinance and so far as they affect
83 this case, are as follows:

"Section XV."

"The fare for one continuous trip for twelve (12) months from the commencement of operation under this franchise is hereby fixed as follows:

Cash fare for adults	6¢.
Children under twelve and over five	Half fare.
Children under five when accompanied by guardian	Nothing.

At the end of such period the purchaser shall submit a verified statement of the receipts and expenditures to the Mayor and Commissioners of the City of Paducah and if it appears therefrom (after investigation and verification of such report) that the purchaser has received more than a sufficient sum to pay expenses and a reasonable rate of return on the capital invested, such purchaser shall re-pay to the City of Paducah the difference between the amount necessary for such expenses and a reasonable rate of return upon invested capital and the amount actually received.

At the expiration of each twelve months during the life of this franchise for the purpose of regulating fares to be charged by the purchaser, and to accomplish that purpose, and to prevent excessive fares, the purchaser, shall at the expiration of each twelve months during the life of this franchise submit to the Commissioners of the City of Paducah a verified statement of the receipts and expenditures and if from any of such reports it appears the fare as fixed is more than sufficient to provide a reasonable rate of return upon the invested capital, the city shall reduce such fare accordingly.

For the purpose of ascertaining the rate of fare to be charged hereunder the City may cause said property to be appraised as follows:

The City shall appoint a disinterested street railway expert, and the purchaser shall appoint such expert appraiser for its part, and the two so appointed shall select a third expert appraiser. None of such persons so selected shall be a resident of McCrachen County, Kentucky. Said expert*d* shall report in writing to the Mayor and Commissioners of the City of Paducah within three months after their appointment the total valuation of the property owned, controlled or used by the purchaser, in connection with the operation of a street-car system in Paducah and its vicinity, but this franchise shall not be estimated or considered in its value. The cost of such appraisal to be borne equally by the City and the purchaser hereof.

In view of these provisions the situation here seems to require very little if any discussion—a simple statement being all that is necessary to make clear the issue involved. Undoubtedly the provisions of the ordinance of April 4th, 1919, copied above, may, for the purpose of this case, be regarded as a contract between the plaintiff and the defendants. By its terms the parties fixed the rates for

ne year from the beginning of plaintiff's operations, which was on October 1st, 1919 and no question is presented in respect to the ear that terminated on September 30th, 1920. That contract bears like upon all parties to it. All are equally bound by its terms—he defendants as well as the plaintiff.

In discussing the respective rights and the duties of the parties ve may, we think, fairly assume that for all practical purposes the reports required by the contract to be made by the plaintiff
84 were, though somewhat informal and not made precisely in the way nor at the exact time named in the contract, were nevertheless substantially what it calls for in respect to the facts o be reported to the defendants for the year ending on September 30th, 1920, in order to the fixing of rates for the following year. We say this in view of the object to be effected and the probable mpossibility of having all the facts in hand exactly at the close of he year. But whether this be strictly accurate or not, the one material question in this litigation as presented by the pleadings is: Did the defendants comply with the terms of the contract before or when they: on September 21st fixed the rates prescribed in the ordinance called in question in this litigation which was to go into effect on the 1st day of October, 1920. This is a question of fact, as well as of law, and we think it is plain that the defendants in no way did the things which were necessarily conditions precedent to their right to fix the rates prescribed by the ordinance of September 21st, 1920, for the *ye*ar beginning October 1st then next. The most casual reading of Section 15 of the ordinance of April 4th, 1919, will, we think, show the accuracy of this statement. On the contrary the defendants seem without any investigation, arbitrarily to have fixed those rates, and in view of this departure from the contract between the parties, we may fairly say that the question is, Has the plaintiff a clear right in the situation described to have the enforcement of the ordinance of September 1920, enjoined? Obviously that ordinance was not based upon the contract requirements. On the contrary, the defendants disregarded those requirements, and as we have stated, arbitrarily fixed the rates sought to be enjoined. In this situation the question is, Whether the ordinance attacked in this litigation can be sustained even though the plaintiff did not literally comply with some of the contract requirements at the close of the year on September 30th, 1920. And we may suggest in this connection that the defendants have in no way attacked the rates plaintiff is now charging (whatever they may
85 be) although the courts of the State have always been open for any proper proceeding with that end in view.

Instead of waiting (as is literally required by the ordinance of April 4th, 1919), until the close of the year on September 30th, 1920, the plaintiff on the 20th of that month made a report to the defendants of the facts as they existed up to a certain date, but added an "estimate" of the earnings for the remaining time up to October 1st, and in this connection announced its purpose to raise the rates to be charged after September 30th. Before the latter date the defendant had, on September 21st, 1920 sought to put in force

the ordinance complained of in this suit, and thereby attempted to fix the rates above set forth, and to which alone this litigation applies.

The defendants also in the ordinance of September 21, 1920 imposed the heavy penalties set forth therein. If we assume that the plaintiff was technically or literally wrong in what they did, so far as the mere details of doing it were concerned, the defendants have not sought in any way to enjoin the plaintiff. Instead the defendants did that which had no lawful or fair basis under the contract when it made rates in September, 1920, and took none of the necessary precedent steps required by Section 15 of the contract ordinance, namely, that of April 4th, 1919, which had fixed the relations between the parties. Besides, we may add, the defendants took their hasty and possibly ill-advised steps because the plaintiff in its written communication of September 30th, 1919 had perhaps also ill-advisedly, announced its purpose to fix and put in operation other specified rates on October 1st, 1920, and the action of the defendant was no doubt designed to prevent that step. Clearly whatever rates the plaintiff fixed are not in litigation here, but equally clear it is that on the first day of October, 1920, the parties should both come back to the requirements of Section 15, and then work out whatever result its terms may fairly demand. It is to be hoped that this will be done, and especially as that section only provides for a situation when the earnings of the plaintiff are adequate to pay dividends, but does not, in terms at least, provide for alternative case when the earnings fall short of doing that. Desire for fairness might take that also into consideration and forestall other disputes.

This situation seems again to recall the fact that the relief
86 asked in the bill is an injunction againt the enforcement of the ordinance adopted by the defendants and effective October 1st, 1920, and which ordinance clearly was made in positive and direct disregard of the contract which provided for taking the steps required by Section 15 of the ordinance of April 4th, 1919. Indeed until the defendants comply with the terms of Section 15 of the contract ordinance they would seem to be barred or estopped from fixing rates.

We have in the last few days passed upon a question quite analogous to the one now presented. This was in a case of the Home Telephone Company v. City of Louisville. There the City had over twenty years before sold a franchise to the Telephone Company. The purchaser thus obtained the franchise. The franchise expired on March 7th, 1921, but the City had failed and refused to perform the plain "duty" imposed upon it by Section 3037-*d* of the Kentucky Statutes, which reads as follows:

"That eighteen months before the expiration of any franchise acquired under, or prior to the present Constitution, it shall be the duty of the proper legislative body or boards to provide for the sale of a similar franchise to the highest and best bidder, on terms and conditions, which shall be fair and reasonable to the public, to the corporation, and to the patrons of the corporations.

Provided, That if there is no public necessity for the kind of public utility in question, and, if the municipality shall desire to discontinue entirely the kind of service in question, then this section shall not apply.

2. If the municipality shall desire to own or operate, on public account, the utility in question, and shall take the steps necessary thereto within two years after the passage of this act, or within two years before the expiration of the franchise, and shall offer to purchase at a fair valuation, the plant of the company which is then rendering the service, then the municipality shall be under no obligation, by reason of this act, to sell or renew or to continue the franchise in question."

We, therefore, held that the City could not interfere with the Telephone Company until it had preformed its "duty" to sell a franchise. It had refused to do this and we felt compelled to hold that until the defendants in the case sold a franchise they could not prevent the Telephone Company from exercising its rights, one of which under the circumstances, appeared to be that of fixing
87 rates until the franchise had been sold—those attempted to be fixed by the City appearing to be confiscatory.

As we view the contract in the present case it was designed to secure a yearly fixing of rates upon the basis of earnings, and to that end certain steps were required to be taken by the defendants as a condition precedent to their action. Are we justified in hoping that on or about the first day of October, 1921, rates may be fixed on the basis of the contract or of justice, if possible, for the year beginning October 1st. We say this, because after that date the question as to previous dates may be a "moot" one.

In our view of the present case its scope is limited to the rates fixed or to be fixed for the period between the 1st day of October, 1920, and the 30th day of September, 1921, both inclusive. On the last named date another report will be due from plaintiff to the defendant. Upon its being filed, as Section 15 requires, the defendants are bound to do what the contract prescribed in respect to the fixing of rates thereafter to prevail. If this is all done fairly and promptly there may be no more trouble, especially if both sides desire to do the fair and just thing. Or, if the rates prevailing during the first year are neither adequate nor fair, it may be presumed or hoped that the parties will agree upon rates that are fair and just without further litigation.

It results that the plaintiff is entitled to have a decree entered enjoining the enforcement of the ordinance complained of, and which was enacted by the defendants on September 21, 1920, inasmuch as upon the grounds stated it is not enforceable either under the contract between the parties or otherwise, but such decree shall in no way bar the defendants from the right to make rates pursuant to the contract if that be just or fair to both sides.

A decree accordingly may be entered.

WALTER EVANS,

June 25th, 1921. *Judge.*

88 The following is an order filed and entered Dec. 8, 1921.

In the District Court of the United States, Western District of Kentucky, at Paducah.

Equity. No. 11.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH et al., Defendants.

Order.

This day appeared the defendants by Roscoe Reed, their counsel, and filed their assignment of errors and petition for appeal, and it is now ordered that said appeal to the Supreme Court of the United States as prayed for in said petition, be, and the same is hereby allowed, upon the execution of a bond with sufficient surety in the sum of Two Hundred Dollars ($200.00); said bond not to operate as a supersedeas.

WALTER EVANS,
Judge.

December 8, 1921.

89 The following is an assignment of errors, filed December 8, 1921.

In the District Court of the United States for the Western District of Kentucky, at Paducah.

Equity. No. 11.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH, a Municipal Corporation of Kentucky; FREDERICK W. KATTERJOHN, Mayor; Wm. V. EATON, Commissioner of Public Safety; MICHAEL WILLIAMS, Commissioner of Public Property; R. WYNN TULLY, Commissioner of Public Finance, and JAS. W. EAKER, Commissioner of Public Works, Composing the Mayor and Board of Commissioners of Paducah, Ky., Defendants.

Assignment of Errors.

Now comes the defendants, City of Paducah, a Municipal Corporation of Kentucky, Frederick W. Katterjohn, Mayor, Wm. V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, R. Wynn Tully, Commissioner of Public Finance and Jas. W. Eaker, Commissioner of Public Works,

composing the Mayor and Board of Commissioners of Paducah, Ky., and say that in the record and proceedings in the above entitled cause in the District Court of the United States for the Western District of Kentucky, there is manifest error in this, to-wit:

That the decree entered in this case on the 25th day of June, 1921, and which decree is in words and figures as follows, to-wit:

"This cause came on to be heard and was argued by counsel, and upon consideration thereof the court delivered its opinion in writing, which is now filed, and upon consideration of the whole case, and pursuant to said opinion, it is now ordered, adjudged and decreed by the Court as follows:

1st. That the defendants, City of Paducah, a Municipal corporation of Kentucky, Frederick W. Katterjohn, Mayor of Paducah, William V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, Richard Wynn Tully, Commissioner of Public Finance, James M. Eaker, Commissioner of Public Works, composing the Mayor and Board of Commissioners of the City of Paducah, are and each of them is enjoined and restrained from in any manner enforcing or attempting to enforce against the plaintiff or any of its officers, agents or employes, any of the provisions of the ordinance enacted, adopted and approved by the said defendants on or about the 21st day of September, 1920, and which ordinance is set out and copied in full into the plaintiff's petition or bill of complaint in this action, and

2nd. That the plaintiff do have and recover of the said defendants its costs herein expended, as same may be property taxed by the Clerk."

is erroneous, and the Court erred in rendering such decree, and erred in said judgment or decree in enjoining or restraining the defendants from in any manner enforcing or attempting to enforce against the plaintiff or any of its officers, agents or employes any of the provisions of the ordinance enacted, adopted and approved by the said defendants on or about the 21st of September, 1920.

And the Court erred in giving judgment against the defendants in favor of the plaintiff for the costs expended by said plaintiff in the prosecution of this action.

ROSCOE REED,
Attorney for Defendants.

91 The following is an order filed December 16, 1921.

In the District Court of the United States for the Western District of Kentucky, at Paducah.

In Equity.

No. 11.

PADUCAH RAILWAY COMPANY, Plaintiff,

vs.

CITY OF PADUCAH et al., Defendants.

Order.

It is ordered that the Appeal Bond this day tendered be now filed and approved.

WALTER EVANS,
Judge.

Open Court and Enter.
Dec. 16, 1921.

92 The following is an appeal bond filed December 16, 1921.

In the District Court of the United States for the Western District of Kentucky, at Paducah.

Equity. No. 11.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH, a Municipal Corporation of Kentucky; FREDerick W. Katterjohn, Mayor; Wm. V. Eaton, Commissioner of Public Safety; Michael Williams, Commissioner of Public Property; R. Wynn Tully, Commissioner of Public Finance, and James W. Eaker, Commissioner of Public Works, Composing the Mayor and Board of Commissioners of Paducah, Ky., Defendants.

Appeal Bond.

Know all men by these presents: That we, the City of Paducah, a municipal corporation of Kentucky, Frederick W. Katterjohn, Mayor, Wm. V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, R. Wynn Tully, Commissioner of Public Finance and James W. Eaker, Commissioner of Public Works, composing the Mayor and Board of Commissioners of Paducah, Kentucky, and American Surety Company of New York surety, are held and firmly bound unto the Paducah Railway Com-

pany in the sum of Two Hundred ($200.00) Dollars to be paid to the said Paducah Railway Company, to which payment well and truly to be made, we bind ourselves and each us jointly and severally, and our and each of our heirs, executors d administrators firmly by these presents.

Signed with our seals and dated this 12th day of December, 1921.

Whereas, the above named City of Paducah, a municipal corporaon of Kentucky, Frederick W. Katterjohn, Mayor, Wm. V. Eaton, ommissioner of Public Saf-ty, Michael Williams, Commissioner of ublic Property, R. Wynn Tully, Commissioner of Public Finance d James W. Eaker, Commissioner of Public Works, composing e Mayor and Board of Commissioners of Paducah, Kentucky, hath osecuted an appeal to the Supreme Court of the United States to verse a judgment rendered in the above entitled action by the istrict Court of the United States for the Western District of entucky at Paducah.

Now, therefore, the condition of this obligation is such that if the ove named City of Paducah, a municipal corporation of Kentucky d Frederick W. Katterjohn, Mayor, Wm. V. Eaton, Commissioner Public Safety, Michael Williams, Commissioner of Public Propty, R. Wynn Tully, Commissioner of Public Finance and James . Eaker, Commissioners of Public Works, composing the Mayor d Board of Commissioners of Paducah, Kentucky, shall prosecute eir said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

CITY OF PADUCAH,
A Municipal Corporation of Kentucky,
By F. W. KATTERJOHN,
Mayor.
W. V. EATON,
Commissioner of Public Safety.
MIKE WILLIAMS,
Commissioner of Public Property.
J. W. EAKER,
Commissioner of Public Works.
WYNN TULLY,
Commissioner of Public Finance.
AMERICAN SURETY COMPANY
OF NEW WORK,
By F. C. BOONE,
Resident V. Pres.

Attest:

AMERICAN SURETY COMPANY
OF NEW YORK,
By JAMES D. MOCQUOT,
Resident Assistant Secretary.

Approved:
WALTER EVANS,
Judge.

95 The following is a præcipe, filed December 16, 1921.

Equity. No. 11.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH, a Municipal Corporation of Kentucky; FREDERICK W. Katterjohn, Mayor; Wm. V. Eaton, Commissioner of Public Safety; Michael Williams, Commissioner of Public Property; R. Wynn Tully, Commissioner of Public Finance, and James W. Eaker, Commissioner of Public Works, Composing the Mayor and Board of Commissioners of Paducah, Ky., Defendants.

Præcipe.

The Clerk will please prepare a copy of the entire record in this action for the purpose of an appeal to the Supreme Court of the United States.

CITY OF PADUCAH,
A Municipal Corporation of Kentucky;
FREDERICK W. KATTERJOHN,
Mayor;
WM. V. EATON,
Commissioner of Public Safety;
MICHAEL WILLIAMS,
Commissioner of Public Property;
R. WYNN TULLY,
Commissioner of Public Finance, and
JAMES W. EAKER,
Commissioner of Public Works,
Composing the Mayor and Board of Commissioners of Paducah, Ky.,

By ROSCOE REED,
Attorney.

Service Accepted.

PADUCAH RAILWAY COMPANY,
By WHEELER & HUGHES,
Attys.

96 The following is an agreement filed December 31st, 1921.

In the District Court of the United States for the Western District of Kentucky, at Paducah.

Equity. No. 11.

PADUCAH RAILWAY COMPANY, Complainant,

vs.

CITY OF PADUCAH, a Municipal Corporation of Kentucky; FREDERICK W. Katterjohn, Mayor; Wm. V. Eaton, Commissioner of Public Safety; Michael Williams, Commissioner of Public Property; R. Wynn Tully, Commissioner of Public Finance, and James W. Eaker, Commissioner of Public Works, Composing the Mayor and Board of Commissioners of Paducah, Kentucky, Defendants.

Agreement.

We hereby agree that the maps of the City of Paducah, Kentucky, showing the location of the street car system operated by the Paducah Railway Company may be omitted from the record to be transmitted to the Clerk of the Supreme Court of the United States, this the 21st day of December, 1921.

CITY OF PADUCAH,
A Municipal Corporation of Kentucky;
FREDERICK W. KATTERJOHN,
Mayor;
WM. V. EATON,
Commissioner of Public Safety;
MICHAEL WILLIAMS,
Commissioner of Public Property;
R. WYNN TULLY,
Commissioner of Public Finance, and
JAMES W. EAKER,
Commissioner of Public Works,
Composing the Mayor and Board of Commissioners of Paducah, Ky.,
By ROSCOE REED,
Attorney.

PADUCAH RAILWAY COMPANY,
By WHEELER & HUGHES,
Attys.

97 The following *is* the depositions filed December 20, 1920

Deposition of C. A. Hahn, taken at the offices of Messrs. Tyler Tucker, Eames & Wright, Ames Building, Boston, Massachusetts on the fourteenth day of December, 1920, to be read in behalf of the complainant in an action pending in the District Court of the United States for the Western District of Kentucky Division wherein Paducah Railway Company is complainant and the City of Paducah, Frederick W. Katterjohn, Mayor of Paducah William V. Eaton, Commissioner of Public Safety; Michael Williams, Commissioner of Public Property; Richard Winn Tully Commissioner of Public Finance, and James M. Eaker, Commissioner of Public Works, composing the Mayor and Board of Commissioners of the City of Paducah, are defendants.

Appearances:

Hon. Charles K. Wheeler, of Paducah, Ky., and William E Tucker, of Boston, Mass., for the Complainant.

Hon. W. A. Berry, of Paducah, Ky., for the Defendants.

C. A. HAHN, being first duly sworn by Richard J. Martin, Notary Public within and for the County of Suffolk and Commonwealth of Massachusetts, deposes and says, in answer to question- by Mr. Wheeler, as follows:

Q. Mr. Hahn, what is your name, and where do you live?
A. My name is C. A. Hahn. I live in Boston, Massachusetts.
Q. What is your business?
A. I am an engineer.
Q. What sort of engineer?
A. I am a civil and mechanical engineer.

98 Q. How long have you been a civil and mechanical engineer?

A. Twelve years.

Q. Narrate briefly your experience in your profession since you first engaged in it,—I mean by that, give a brief outline of the details of your employment, including your education.

A. I was graduated as a civil engineer from Brown University Providence Rhode Island. I was a student of mechanical engineering at Brookland Polytechnic Institute, and then graduate student at Columbia University, of New York, in Mechanical engineering; also a candidate for the degree of Doctor of Philosophy in economics political and social science. I have been first employed for approximately two years as a foreman of construction by the Croton Fall Construction Company of New York. In such capacity I constructed roads, cu-verts, bridges, piers, masonry structures, and steel framing I was employed for one year as a junior engineer with John C. Ostrup Professor of Civil Engineering at Stevens Institute, and Consulting Engineer of the Texas Oil Company. In such capacity I was field engineer and inspector on construction of a new oil station at Bayonne, New Jersey, building bulkheads, railroad sidings, warehouses and other structures. I was thereafter engaged for a year a

draftsman in the Bureau of Engineering Design of New York City, making miscellaneous designs and estimates for construction work in New York. I was then engaged as a designer by the Bureau of Highways and Sewers of New York City, Computing drainage areas, conduits and sewers, and a separate control system for lower Manhattan. Thereafter I was engaged for a year by the Commissioner of Accounts as draftsman and designer. For three years after that I was employed as engineer examiner by the Board of Estimate and Apportionment of New York City. In such capacity I reported on a considerable number of issues,—special revenue bonds, tax levies, bridge assessments—for public improvements and maintenance in New York City. At various times I was solely responsible for the appropriations for construction and maintena-ce works in the
99 departments of docks and ferries, plants, structures and bridges, of the Public Service Commission of the First District, the Armory Board, water supply, gas and electricity, and other engineering departments of New York City. For two years thereafter I was successively engineer, general superintendent of material control, assistant manager of the Division of Stores and Materials, and finally chief material engineer for the American International Shipbuilding Corporation at Hog Island. In the latter capacity I supervised approximately thirty-five hundred engineers, accountants and others engaged in everything that had to do with the furnishing of materials for the 180 ships then under construction. For the past year I have been employed by Stone & Webster, located at the Boston Office, as engineer, mostly engaged on public utility matters. During the period I have been in charge of the design and estimate for the Reus to Tarragona tram system in Spain. I have appraised the Brockton & Plymouth Street Railway in Massachusetts, the Pensacola Electric Company of Florida, the Columbus Power Company of Georgia, the Bush Terminals of New York, the Columbus Gas Light Company of Georgia, the Columbus Railroad Company of Georgia, and the Paducah Railway Company.

Q. Mr. Hahn, in appraising the Paducah Railway properties, did you visit Paducah and look at the property?

A. Yes, sir, I visited Paducah, accompanied by an assistant, and inspected an inventory of the property of the Paducah Railway Company.

Q. Describe the system, briefly, pursued by you in reaching your conclusions of appraisal of the Paducah properties.

A. I first inspected the property as a whole. I subsequently inventoried or listed every item that entered into the property; that is, I measured the span wires for the overhead construction, counted the insulators, counted the feeder taps, counted all trolley appurtenances, ascertained the length of track, inspected and inventoried the rolling stock and all the structures. I counted practically everything. Where I did not count or actually determine the quantities in Paducah, I took a drawing or secured a tracing or sketch of the structure and brought it back with me to Boston to compute
100 the quantities, where I had greater facilities for such kind of work. Simultaneously with the inventorying and counting

and inspecting of this property I ascertained local prices for material and labor then obtaining in Paducah. These prices were ascertained in part, from the railway company's books, and in part by inquiry in the city. I also brought these prices to Mr. Lockwood, the local contractor in Paducah, who approved or modified these prices in accordance with general engineering practice in that locality. This inventory or list of the property I brought to Boston, where we arranged the inventory,—that is, rather, I should say I secured the services of four additional engineers in Boston who assisted in the arrangement of this inventory in accordance with the Interstate Commerce Commission classification of accounts. We then assumed theoretical and most efficient gang organizations for reconstructing this property. That is, we know of our knowledge what gangs would be required to do the work such as exists in Paducah. We also modified our general ideas by the advice we secured in Paducah. The cost of these gang organizations was then computed and unit prices ascertained. We then multiplied these unit prices by the quantities, as shown in our inventory. The prices and quantities, when multiplied together, gave the basic labor and material costs to reproduce this property. We computed it on two bases. First,——

Q. Just a moment before you reach unit prices.

Mr. Berry: Let me object right there to the answer of the witness. The defendant objects to the answer of the witness because the same contains simply conclusions and not statements of facts.

Q. Mr. Hahn, when in your inquiry you found that prices for material or labor in Paducah were in conflict with average prices for material and labor according to your experience under like conditions elsewhere, what did you adopt as your guide?

A. Always adopt the lowest.

101 Q. You adopted the lowest?

A. The lowest and most efficient way and most expedient way of doing the work—always the cheapest way.

Q. Then, the prices which you have narrated and are about to narrate are based upon what you ascertained to be the lowest prices for the reproduction of the properties you are speaking of?

A. They are, Yes, sir.

Q. You were about to remark that you made your calculations upon two bases, on double bases. Will you tell the Court what that double bases was? That is, what did you take, what period did you take for caluclationg such a basis?

A. I took the inventory or the status as a system on September 1 1920, as representing the property then owned by the Paducah Railway Company. I adopted prices of materials as prevailed on June 30, 1920. I also computed the cost to reproduce new this property with the same inventory, but with prices that prevailed on June 30 1914. That is, I determined two measuring sticks, as one might say,—one of prices as prevailing to-day, and one of prices as obtained in 1914, or prior to the war.

Q. Now, Mr. Hahn, do I understand you to say that, in fixing the cost of reproducing this property with a view to ascertaining its

value, you ascertained the number of feeder wire, the number and amount of rail, the number of ties, the number of posts, and went into a detailed investigation of the various physical constituent elements going to make up this property as a whole?

A. I did.

Mr. Berry: I ol ject to that question as leading and predicated upon no statement of the witness heretofore made.

Q. Mr. Hahn, what did you find the present value of the property as of June 30, 1920, to be?

A. I found the cost to reproduce new of the entire property as existing on September 1, 1920 with prices as prevailed on June 30, 1920, as $1,439,082.

Q. What do you say in respect to September, 1914?

102 A. I determined that it would cost to reproduce the same property, with prices as obtained on June 30, 1914, $715,520.

Q. What is the difference,—I mean, what is the cause of the difference between the two conclusions reached by you?

A. The difference is due entirely to the increase in prices of materials and labor, which increase in prices has approximated about 104 per cent above the prices that obtained in 1914.

Q. Mr. Hahn, taking the two figures that you have given, that is the one for 1920 and the one for 1914, have you now an opinion as to what is the present value of the properties of the Paducah Railway Company?

A. I have an opinion, yes, sir.

Q. What, in your opinion, is the reasonable market value of the properties of the Paducah Railway Company at this time?

A. The value must lie in some place between the cost to reproduce new as of 1914 prices, prewar prices, and the cost to reproduce new at present prices. Where it is between there I am not prepared to state at this moment. It is nearer the 1920 prices. It is at least worth $855,000, which is its capitalization, I believe.

Q. The reason you give for not being able to state with some degree of certainty upon its value at this time is based entirely upon the market conditions of material and labor, it is, or is it not?

A. Yes, sir, it is entirely. Prices are fluctuating every day; some are receding, some are even increasing. No man can predict what the prices will be tomorrow in any commodity.

Q. Mr. Hahn, are you familiar with the method in general use by engineers in your profession throughout the United States to ascertain the value of public utility properties such as we are considering here?

A. I am, yes, sir.

Q. What is the method,—what I mean especially to direct your attention to is not the method adopted by you, but the one in general use?

A. This is the method generally adopted by engineers.

Q. Are you familiar with any other method of ascertaining such value?

A. I am not familiar with any other method.

103 By Mr. Tucker:

Q. Mr. Hahn, I wish that you would explain how the 1914 figure is made up? You say that you followed the I. C. C. Classification. I want you to go ahead and give the detail.

A. Yes.

Q. Not too fully but enough so that we will get the picture of how the value is made up.

A. Yes, sir. The Interstate Commerce Commission classification is made up along general material and labor costs——

Q. By the way, is that the general classification which engineers now use?

A. It is almost universally used, Mr. Tucker, particularly in rate-making cases. I may best illustrate that by reading the titles to some of the accounts. The first account is known as 502 and it consists of the right of way; and 503 is——

Q. Before you pass from right of way, just explain what you in this case have included under that heading?

A. For instance, in the case of the cost to reproduce new as of 1914 I have an item of $4,000 for the right of way for that portion of the property within the city limits. That $4,000 represents the cost of acquiring a private right of way within the city, and is predicated upon prices of land as appraised in adjacent lots.

Q. On a front foot or acreage basis?

A. Within the city it has been on the front foot basis; outside the city limits it has been on the acreage basis.

Q. Where did you get those figures with respect to adjoining land, if you will tell us, please?

A. Those figures were secured from an appraisal made by two real estate agents in Paducah. The names of those gentlemen I do not recall at this minute, but I can introduce them. I have their appraisals in my office.

Q. Perhaps Mr. Berry would be interested in having the names.

A. One man's name is Phillips,—R. B. Phillips; and the other man's name I do not recall at this moment. He is in the same building, Mr. Wheeler, as I believe you are in,—Lackey,—Ernest Lackey.

Q. In other words, you had their estimates of substantially present value of adjoining land in each case?

104 A. Yes, sir, as of——

Q. And you took the same figures that they used in appraising land adjoining right of way?

—. Yes, sir, I did. Their appraisal was based on prices obtaining in 1919.

Q. Now, go ahead with your classification.

A. The next item, 504, is grading. Now, the details, as indicated in my appraisal, include the excavation and disposal of loose material. The estimate indicates that there are 28,359 cubic yards of grading, at a unit price, which is multiplied out. We have curbing under that account, concrete curbing, so much money. Added up together, they give us the total of that account. The next account, 505, shows ballast, and the ballast is made up of concrete ballast and

gravel ballast; the quantity shown, a description of the ballast, its location. Account 506, the ties. Account 507 is rails. rail fastenings and joints. Account 508 is special work. That special work is track work, special rail construction, meaning frogs, switches, crossings.

Q. What you use in going around corners and that kind of thing?

A. Yes, sir.

Q. And that has to be specially constructed by manufacturers?

A. It does. Each piece is special, Mr. Tucker. That is why it is known as special work. It is factory made. Each piece has got to fit together—joint and everything. Account 510 is track and roadway labor. Account 511, paving. Account 512, roadway machinery and tools; 515, bridges, trestles and culverts; 516, crossings, fences and signs; 519, poles and fixtures; 521, distribution system; 523, shops and warehouses; 530, passenger and combination cars; 532, service equipment; 533, electric equipment of cars; 536, shop equipment; 537 furniture; and 538, miscellaneous equipment.

Then we come to general construction costs, which could not be definitely allocated to any of these other accounts. They are listed as engineering cost, law expenditures during construction, interest during construction, injuries and damages during construction, taxes during construction, administrative organization expenses
105 during construction. Then, organization prior to construction, consisting of preliminary investigation, cost of selling securities, technical and legal expense, and interest on those three items. The last item is working capital, which consists of materials and supplies, and minimum cash balance.

Q. Now, then, first speaking of the last, state the amount of working capital, including cash, and materials and supplies, which you found on the 1914 basis?

A. I found working capital on the basis of 1914 prices, as $17,000.

Q. How is that divided?

A. That is divided between materials and supplies, $7,500, and minimum cash balance, $9,500.

Q. Now, by materials and supplies what do you mean?

A. Those are the materials and supplies which have been placed in stock immediately upon the property going into operation—materials and every nature of supplies which are used immediately. There immediately occurs the necessity for replacements and repairs soon after the property enters into operation. One must always have a bank of materials and supplies.

Q. For what purpose?

A. For replacements and renewals.

Q. That was an actual determination of the materials and supplies on hand at the time you took your inventory?

A. That was the average cost of materials and supplies for the six years preceding and inclusive of 1914, as determined from the books of the company.

Q. The average for six years?

A. For six years, yes, sir preceding and including 1914.

Q. How about the cash?

A. The cash is based on the same basis.

Q. The average for six years?

A. For six years.

Q. Now, speaking of some of the other items there, what is the first item on this unclassified or unallocated amount?

A. That is known as engineering cost. I will describe that to you.

Q. I wish you would, please.

A. Engineering cost consists of salaries and expenses of the chief engineer and his staff of assistants engaged in making working plans estimates, specifications, contracts, purchases and shop inspection of equipment and materials and executing detailed technical supervision of work during construction.

106 Q. What is the next one, please?

A. The next one is law expenditures during construction. Law expenditures consist of the salaries and expenses of counsel solicitors, and attorneys engaged on legal matters incurred on account of construction.

Q. Go right ahead.

A. The next is interest during construction. Interest during construction consists of interest paid on moneys acquired for use in connection with expenditures incidental to the construction and equipment of the road, and this was computed at six per cent on one half of the cost of the entire property for a period of one year. That is we assume a construction period for completing this work, and then use our best judgment in determining what moneys we will need to construct this road,—always assuming that you would conserve your money so far as you can and borrow just as little as you can.

The next item is injuries and damages. They comprise the amounts paid in settlement of injuries to persons and for damages inflicted upon adjacent property during and incidental to construction work. It also includes all other legal and other expenses incurred in connection with such payments.

The next to the last of these costs is taxes during construction. Taxes during construction consists of taxes and assessments levied on the property during the construction period. The amount included is based on the normal tax rate obtaining in Paducah, and figured for one half the construction period at that rate.

Q. Why did you figure it at one half?

A. We figured it for one half because we were trying to minimize all such charges. We assume that property will not be taxable before half the construction period has elapsed.

Then, the next charge is administrative organization expense during construction. The amount included for this item is made up of salaries and expenses of the general body directing the work, cost of stationery and supplies and other office charges. That is a small amount, but a necessary element in the appraisal.

107 Q. In each case these details show how much for each one of those items you allow?

A. It does, yes, sir. This exhibit contains all details, supporting details for every item.

Q. You have two exhibits, have you?

A. I have, yes, sir.

Q. One of them is on the 1914 basis and the other on the 1920 basis: is that right?

A. They are, yes, sir.

Q. And in using these amounts, how did you determine the actual amount that you would use?

A You mean these general overhead charges, one might say?

Q. Yes.

A. We determine it upon general practice and our experience—our large experience in construction work of this type. I in every instance have taken the minimum cost and the most economical way of constructing this property. It has been based on our experience in this kind of work.

Q. And you have no doubt that the amounts which you have allowed would actually have to be expended?

A. They would.

Q. If this property were to be reconstructed at the present time?

A They most assuredly would have to be expended.

Q. Your exhibits will show in detail just how much of the property is inside the city limits and how much is outside; is that right?

A. Yes, sir, I have segregated within the city limits and without the city limits, in both instances.

Q. Just give, roughly, the amounts inside and outside—just the totals, please?

A. On the basis of cost to reproduce, new June 30, 1914, the property inside the city limits would cost $645,570; the property outside the city limits would cost $69,950; making a grand total for all property within and without the city of $715,520.

Q Now take your 1920 basis and tell us the same thing, please.

A. Based on the cost to reproduce, new as of prices obtaining on June 30, 1920, the property within the city limits would cost $1,293,820: the property outside the city limits would cost $145,262; making a total of $1,439,082.

108 Q. Now, did you make a determination of the accrued depreciation existing in this property?

A. I did.

Q. Will you tell in a general way how you made that depreciation?

A. I examined the several constituent parts of the property, that is, everything that enters into it,—the cars, the tracks, the paving, the overhead trolley construction,—and estimated a probable future life of this property, based on my experience; I then computed what part of the cost to reproduce, new would result from applying certain percentage factors for this accrued depreciation. Each of these items was treated separately, and the cost to reproduce, new was modified in accordance with these factors so as to reflect the present probable value of each item.

Q Now, what did you determine, on the 1914 basis, to be the total accrued depreciation in the property?

A. The total accrued depreciation in this property is 12.4 per cent

Q. And what would that make the per cent condition of the property?

A. It would make the property in 87.6 per cent total condition. I should explain at this point that that is based on several items which are not depreciable. The materials and equipment as represented to one observing them, that is, the bare bones without the general charges which could not be allocated to the accounts, indicate that the property is in 85.3 per cnet of condition, or an accrued depreciation of 14.7 per cent.

Q That is, there were some factors entering into the cost to reproduce which you did not depreciate?

—. Did not depreciate. Of course it is not general practice to depreciate those charges.

Q. What are those items, please?

A. Land, right of way, interest——

Q. In other words, your experience is that land and right of way increase in value rather than depreciate?

A. They appreciate rather than depreciate. Interest during construction.

109 Q. Now, in each case if you will explain why it should not be depreciated?

A Interest during construction naturally does not depreciate for the reason that you have paid out such moneys and it still remains true that you don't lose anything by having paid it out; it does not depreciate. Taxes during construction does not depreciate, for the same reason. Preliminary investigations does not depreciate. If you have once made it you have made it and it does not need anything more in order to run. The cost of selling securities remains constant for a given period. That does not depreciate. The technical and legal expense incurred in connection with organization prior to construction does not depreciate. Neither does materials and supplies, nor minimum cash balance; they remain undepreciable. Those factors, having entered into the total, the grand total, do not depreciate as much as the bare physical bones of the property; which explains the reason for the difference between 14.7, as to the materials and equipment as listed in the inventory, and 12.4 as the grand total of the cost to reproduce, new this property.

Q Now, will you read into the record, please, the depreciated values of the property as you have determined them on both bases?

A. Yes, sir. Taking prices that prevailed in 1914, the property within the city limits depreciated,—that is, the cost to reproduce, new such depreciation—to $554,637; the property outside the city limits, $60,836; making a grand total of cost to reproduce, new, less, depreciation, on the basis of 1914 prices, of $615,473. On the basis of cost to reproduce, new, on the basis of 1920, less depreciation, the property inside the city limits is $1,131,695; the property outside the city limits, $128,925; making a grand total for all property of $1,260,620.

Q. Now, did you include anything in these figures which you have given for going concern value or development cost?

A. These figures do not include going concern value and development cost, special value of the land for railway purposes, profits o

promotion, discounts on securities, net investment in superseded property, and franchise costs.

110 Q. In other words, you made no allowance for any of these items which you have just mentioned?

A. I have made no allowance for any of these.

Q What is the distinction between discounts on securities and the cost of raising moneys, for which you have allowed?

A. The cost of raising money is a very necessary element. It is one of the costs of reproducing the property; it is the cost of marketing your securities. The discount on your securities is the adjustment of the interest rate; and in view of the fact that I have allowed certain interest rates, I have not allowed any discounts on the securities.

Q. Now, you say that it is what you have to pay for selling your securities. To whom do you pay that money.

A. You pay that to the financial institution that markets, sells and prepares your securities.

Q. Suppose you sold them yourself: would you incur costs?

A. You would incur the same costs. You would have to print them; you would have to go through the publicity work; you would have to have the incidental expenses of meeting people, interesting them and selling them these securities; office and clerical work involved.

Q. In other words, no matter how you go about to raise this money, whether you apply to somebody else to do it or do it yourself, these costs are necessarily incurred; is that a fact?

A. Yes, sir, absolutely.

Q. Now, you said that the bond discount, the security discount, was an adjustment of the interest rate?

A. Yes, sir.

Q. I wish you would explain just what you mean by that. Give an illustration so that it will be clear.

A. Well, it is generally understood that where utilities or other corporations are regulated and perhaps curtailed in the amount of interest that they can allow—six or seven per cent—it is extremely difficult to sell such securities at this time. The discount must be made in selling these securities,—a discount which makes your rate of return proportionately larger or commensurate with rates

111 of return that are now obtaining in other corporations where they are not regulated or where interest rates may be allowed at sufficiently high rates as to sell the securities at par.

Q. In other words, if you put out a five per cent security and the market was seven or eight per cent, you could not sell it at par?

A. No, sir, you would have to discount it.

Q. That would have exactly the same effect as though your security were, on its face, a higher return security?

A. Yes, exactly.

Q. That kind of cost, you say, should not be allowed in figuring the property value?

A. We have not allowed it, no, sir.

Q. How should that be handled?

A. That should be handled in the amounts allowed for interest on your money.

Q. Amortized from earnings?

A. Yes, sir.

Q. Is that what you mean?

A. I do.

Q. And paid the same way as interest on securities would be paid?

A. Yes, sir.

Q. Now, can you state in a general way, leaving accrued depreciation for the moment, what allowance should be made annually for accrued depreciation—meaning to include in that item replacements and accruing depreciation, both?

A. This amount, of course, varies with the nature of the property. It is generally recognized that the life of a street railway varies from sixteen to perhaps twenty-five years. It may be that twenty years is the proper life of a street railway system such as Paducah. On that basis, a depreciation allowance of four per cent would appear to be proper.

Q. On the twenty year basis?

A. Twenty years—4½ per cent.

Q. Why would not that be five per cent?

A. Five per cent—I beg your pardon.

Q. On a twenty year basis it would be five per cent?

A. Yes.

Q. Now, if you were fixing an amount, to be conservative and following the usual practice, how much would you say it ought to be?

A. To be conservative, approximately four per cent—four and one half per cent.

112 Q. That would be taking the property on the basis of twenty years or twenty-two and one half years' life?

A. Yes, sir, to be conservative.

By Mr. Wheeler:

Q. Four and one half per cent of what?

A. Four and one half per cent of the cost to reproduce, new of the value of the property, the fair value of the property.

By Mr. Tucker:

Q. Is this allowance universally made, in your experience, in rate matters?

A. It is, yes sir. An allowance for depreciation is always made in rate-making cases.

Q. And that is something which the company has to earn, is it, each year?

A. It must earn, yes, sir.

Q. What is the effect if it does not earn it?

A. If it does not earn it the property rapidly deteriorates, and you cannot give efficient service to the people. You waste your property; it flits away from you.

Q. In other words, it consumes the service?

A. Yes, sir. It is dedicated to public use without compensation.
Q. And your judgment is that at least four per cent should be owed——
A. Yes, sir.
Q. —as I understand you?
A. Yes, sir.

By Mr. Wheeler:

Q. Mr. Hahn, what is the trackage of the Paducah Railway Comny outside the corporate limits of Paducah?
A. The total trackage is two and one half miles.
Q. What is the trackage inside of the City?
A. Sixteen miles.
Q. Does that include your sidings and turnouts?
A. I want to modify my answer to you, without referring to my tes. The trackage without the city limits is 2¼ miles, and sixteen les within the city limits, making a total of 18¼ miles.
Q. Does that trackage include sidings and turnouts?
A. Yes, sir. That is equivalent to single track.
Q. There is, is there not, a recognized element of value considered owners of public utilities and by all engineers in your profession herent in all public utility property known as "going value"; isn't at true?
A. Yes sir.
Q. I will ask you what going value is?
A. A going value is an intangible value which is inherent in a property after it has acquired years of service. It is something which makes it worth more in value; it is an enhanced value of a property which has momentum.
Q. Am I right in assuming that you mean to say that a going ue is the difference between property initially installed as a public lity and property which has been installed and which has estabed its patronage, organized its forces and is functioning for the vice of the people and has been so functioning for years?
A. That is exactly what I meant to state by my statement.
Q. Now, Mr. Hahn, you have detailed the method by which you ertained the physical properties of the Paducah Railway Comny. Now, ignoring the result of the methods pursued by you, re you, or not, an independent idea and judgment as to the value the property as it now exists? Regardless of any method which pursued, after having seen this property and familiarized your with it, its surroundings, its patronage, have you not from that idea of the value of the property—reasonable market value, put the reasonable market value of the property?
A. Yes, I have such an idea.
Q. Is the value fixed by you heretofore based upon that judgnt, or is it based upon the result of your investigations—one or h?
A. It is based on my study of the property and my study of other perties of a similar nature.

Q. Mr. Hahn, will you file the detailed estimates made by you a part of your deposition and mark them for identification "A and "B." Have you two or one?

A. I have two.

Q. Mark them for identification "A" and "B."

A. I will now mark as Exhibit A the statement of cost to repr duce, new, property of the Paducah Railway Company, with pric prevailing June 30, 1920. I have marked as Exhibit B the apprais of the property of the Paducah Railway Company with prices prevailing June 30, 1914.

114 (It is agreed that Exhibit- A and B, identified by the wi ness and also identified by the signature of the Notary Publ affixed to each exhibit, need not be incorporated in this depositio but may be attached thereto and forwarded to the clerk of cou therewith.

The signature of the Notary Public is affixed thus: "Richard Martin Notary Public"—to each exhibit, and said Exhibits A an B are attached hereto.)

Mr. Wheeler: You may take the witness.

Cross-examination.

By Mr. Berry:

Q. Mr. Hahn, by whom are you now employed?

A. Stone & Webster, Incorporated, Boston, Mass.

Q. How long have you been in the employment of Stone Webster?

A. Approximately one year.

Q. How long have you been in the service of any other compan or association connected with Stone & Webster or with which it connected?

A. I was employed for two years by the American Internation Shipbuilding Corporation, which is a corporation held by t American International Corporation, which is associated with Sto & Webster.

Q. Those three years, then cover the last three years?

A. Yes, sir.

Q. And are those all the years covered by your employment Stone & Webster or by any company associated with Stone Webster?

A. Yes, sir.

Q. Previous to that time you were in the employ of other concer with which Stone & Webster had no connection?

A. Yes, sir.

Q. When did you make this appraisal of the Paducah propert

A. I made this appraisal in November. On November 8th I le Boston for Paducah, arriving there—leaving Monday afterno and arriving there Wednesday morning.

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Q. 1920?
A. Yes, sir.
Q. You went at the direction of Stone & Webster?
115 A. Yes, sir, I did.
Q. With the understanding that you would be required to testify in this case?
A. Yes, sir.
Q. And made that investigation for that purpose?
A. Yes, sir, I did.
Q. In making the reports which you have filed as exhibits in this case, are all of the items in those reports based upon individual knowledge, or are some of them made from reports made to you by others?
A. In every instance, except in the length of the trackage, it is based on my own personal observations and inspections. In the case of the trackage, the company computed and measured the trackage and submitted these figures to me, and I in turn spot-checked twenty-five per cent of it within random length and found it to be exactly accurate. I then placed the trackage on the best existing city map and scaled the distances of this trackage on this map and checked that in the field against the quantities given to me by the company.
Q. Is that the only item that you did not make a personal investigation of?
A. Yes, sir. That is the only item.
Q. Did you make an investigation of the value of the right of way, personally?
A. I did not, no, sir.
Q. Then, there is another item which you did not get yourself?
A. There is another item.
Q. That you got from somebody else?
A. The right of way and the cost of the car barn lot.
Q. Now, in arriving at the cost of the excavation and disposal of loose material, how did you arrive at that?
A. I secured local prices of labor, that is, the cost per hour for common labor and foremen. I also ascertained the average output of gangs of certain groups of laborers working in the most efficient manner for excavating this material. Having the men that would comprise such a gang, their cost per hour and the quantity they would perform in a day, I ascertained the unit price.
116 Q. How did you arrive at the amount of excavation of loose material necessary to be disposed of?
A. By a personal inspection of the roadbed.
Q. By that personal inspection do you mean that you made the measurements?
A. The measurements were predicated on the trackage. The trackage, in turn, was checked, as I have already explained. I also investigated the nature of the land—the topography, as you might say—and from that estimated the quantity of excavation.
Q. Your quantity of excavation, then, is estimated and not accurate?

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A. It is estimated,—the best engineering judgment and in a
cordance with the usual practice.

Q. The excavation on respective works, of this kind is not alway
the same, is it?

A. No, sir; within certain reasonable limits.

Q. Is it true that on the Paducah property there is practically n
excavation?

—. There is considerable excavation. One must excavate t
put the ties below the given grade, the legal grade. There is ex
cavation in every form of trackage. One must level the ground
curb it, take the sods off. There is always excavation at least t
the depth of the tie.

Q. In arriving at the amount of curbage that was built in thi
work down there, how did you arrive at it?

A. We measured the curbage.

Q. Who is "we"?

A. I had an assistant with me who had to help measure thi
quantity.

Q. Did you do the measuring?

A. Yes, sir, we both did it. One held one end of the tape an
the other held the other end.

Q. You mean that you had one end of the tape?

A. Yes, sir.

Q. And your assistant had the other?

A. Yes, sir.

Q. And measured the curbage?

A. Yes, sir.

Q. When you went out to find the machinery and tools, did yo
get that information from a personal inspection or from a repor
made as to what was on hand?

A. There were lists available. We checked these lists against th
equipment. That is, there was very small equipment. Tha
amounts to a small amount of money in the total and con
117 sists of only shop equipment,—a lathe and a drill an
small hand tools, perhaps a few other miscellaneous tool
The real equipment, the rolling stock, I personally inspected my
self—every bit of it.

Q. Now, referring to the poles, what poles do you have referenc
to that belong to the Paducah Railway Company?

A. The trolley poles holding the span wire and the feeder cabl

Q. Does that belong to the Paducah Railway Company?

A. Yes, sir.

Q. Did you count these poles?

A. I did.

Q. Yourself?

A. Yes, sir.

Q. By going over the property?

A. Yes, sir.

Q. What do you mean by Interstate Commerce Commission classi
fication?

A. The Interstate Commerce Commission classification is a class

fication of accounts as prescribed by the Interstate Commerce Commission for electric railway properties.

Q. In the items going to make up reproduction cost, you have Item 521, distribution system, $40,785. What do you mean by that, Mr. Hahn?

A. Distribution system is the overhead trolley construction, consisting of trolley wire, messenger wire, insulators, strain plates, section switches, and all the other appurtenances to trolley overhead construction.

Q. In other words, that is a part of the physical properties?

A. Yes, sir, it is.

Q. In Item 530 you have what are known as passenger and combination cars, $75,651. In arriving at that value what did you take into consideration in regard to passenger and combination cars? What is there about them that makes that of much account?

A. I will explain that to you, Mr. Berry. Have you the report for 1920?

Q. Yes.

A. I would like to read some of the figures. That amount is made up as follows.

Q. Do you want this?

A. No, that is all right, Mr. Berry. It is account 530, passenger and combination cars. It consists of twenty-eight passenger cars ready to operate, as follows:

118 Closed, single truck; double end, steel sheathed, 34′ 6″ over-all motor passenger cars, 12 reversible slat cross seats, 4 short slat stationary seats, lift sash, arch roof, 5′ 6″ drop platforms, build-up windshields, Nos. 21, 22, 23 and 24—four of them—each at $4,253, making a total of $17,012.

Now, I can go on and read the rest of them but I just read that as an illustration. There are 28 cars with unit prices.

Q. What I want to know is this. In arriving at that $75,000, does that take into consideration all passenger and combination cars in their absolute completeness?

A. It consists of the bodies, the trucks, the brakes, and certain other items, extra items,—for instance, the head-lights, the registers, the trolley catchers, the couplers.

Q. What is there about these cars or any of them that is not included in the $75,000?

A. The electrical equipment of the cars is not included in there. Under the provisions of the Interstate Commerce Commission classification, the motors are separated—the electrical equipment from the car in its entirety.

Q. That is how you get Item 533—$32,338?

A. Yes, sir, Item 533 electric equipment. That is the motors for those same cars.

Q. In arriving at what you testify is the value of this property you take into consideration, if I understand it, all the items of expense from whatever source originally put into it?

A. Yes, sir, I do; that is, I estimate the cost to reproduce the property new.

Q. Yes.

A. That is, all the bare-bone elements of this property; none of the intangibles.

Q. Now, in the 1920 estimate you have Item 546, $11,412, under the head of "Law Expenditures." How did you arrive at the fact that $11,412 was expended for law expenditures in the construction of this company, or would be expended in its reconstruction or new construction? That is on page 11.

119 A. Yes, sir, I have some working papers here. The law expenditure is estimated on the basis of one per cent. of the bare labor and material cost of reproducing the property. That is in accordance with the general practice in estimating this kind of work.

Q. That is an arbitrary item?

A. Yes, sir, it is.

Q. Based upon——

A. By necessity it must be arbitrary.

Q. Based upon no known fact in this particular construction?

A. Based upon our experience, the experience of Stone & Webster in building similar properties.

Q. Now, you have Item 547, interest during construction, $74,338.

A. The interest is estimated in the following way. It is based on prices that prevailed in 1920. The interest rate is eight per cent. It is eight per cent. on the total cost of the land for one year and a half, in view of the fact that we must acquire this land at the inception of the project, and the construction period is one year and a half. So we must carry that land the whole time. So it is eight per cent. for one year and a half on the value of that land, the labor and material cost, plus engineering cost, plus the law expense, plus injuries and damages, plus administration and organization expenses added together, taken at eight per cent. for one half the construction period, or nine months—is the manner in which I estimated the interest on this property, on the moneys necessary to acquire and carry on this work. That, also is in accordance with general practice in estimating this item.

Q. That is also an arbitrary item?

A. It is also based on the experience of Stone & Webster in borrowing money for this kind of property.

Q. That is, if they did not borrow the money——.

A. If they did not borrow the money, Mr. Berry, they could not build the property.

Q. If they did not pay interest on any money, then, I will put it?

A. If they paid no interest on money, there would be no such item.

120 Q. There would be no such item if they had not paid it?

A. If they did not pay interest on their money.

Q. Do you know that they paid interest on money to the amount of $74,000 for that period of time?

A. I know nothing about the history of the company as to its financial activities. My exhibits are costs to reproduce, new based on theoretical estimates, or, rather,—I should not say theoretical

estimates—based upon our best knowledge in building such a property from its inception without regard to financial activities.

Q. Do you mean to tell the Court that it has been your observation from experience that institutions like Stone & Webster borrow money before they need it?

A. They never borrowed money before they needed it. They must have the money to build the road.

Q. You have, have you, in arriving at this $74,000, charged eight per cent. upon the cost of reproduction and assumed that they had that money in their possession for nine months and paying interest on it, haven't you?

A. That is, the construction period is one and one half years. We assume that we would have to have half of that money during that period, or all of it for half that period.

Q. They would not be entitled to charge interest on it after it had been put into the work, would they?

A. No, sir, not after it goes into operation.

Q. Then, has your experience taught you that they borrow money and pay interest on it before they need it to put it into work?

A. They never do, no sir.

Q. You have an item numbered 549, $5,552 for taxes.

A. That is based on one half of one per cent. for half the construction period—nine months. That is based on the taxes of the land. Taxes for the other property is based on one half the construction period of one fourth per cent., which is a low figure to use in this kind of work. We know that taxes are not always levied on the property immediately upon its inception—of course it
121 is not; it is levied when it is completed. So we have taken the very lowest amount of money that might be involved in this.

Q. What per cent. did I understand you to say just now?

A. One fourth of one per cent. for nine months.

Q. What do you include in what is called administrative organization expenses during construction?

A. That includes the amount of money that must be expended for salaries and expenses of the general body directing the work, the cost of stationery, and supplies, and other office charges. It might be said to be the clerical expenses involved with the construction of this property.

Q. Under Section III, Item 550 (a), you have a charge of $7,500 for preliminary investigation. How can that be correctly charged against this property as an investment?

A. Well, it is generally understood that certain work must go on before the actual construction is begun. There are three elements which enter into this organization prior to construction, which is a necessary part of the property,—that is, it is always considered in an appraisal of any property. Those three elements are the preliminary investigation, the cost of selling securities, and the permanent organization. Now, this preliminary investigation comprises a study of the general situation relative to the construction and successful operation of the system contemplated, involving a consultation with legal

authorities and engineers, plans for financing, publicity work, and the like.

Q. You also charged $72,000 for selling securities.

A. Yes, sir. This cost of selling securities consists of the cost of soliciting subscriptions for securities, the preparation and issuance of security certificates, and the actual cost of selling such securities.

Q. Then, how can you consistently charge a corporation, in arriving at the conclusion which you desire to arrive at in this case, with two items, one an item of cost for selling securities, which means the procurement of money to build the thing with, and then
122 turn around and also charge it with interest on the very money that they have sold securities to get?

A. No, sir, I have not done that. One factor of organization prior to construction is the expense involved in organizing this company, that is, incorporating it, or evolving it, or financing it; then later you have the expense of borrowing money for all the items which enter into the property. That is your construction, and you must get advances on your pay rolls, you must make advances for your cars. It is the construction costs.

Q. What do you mean by selling securities; what kind of securities?

A. Selling stocks and bonds of the company.

Q. Suppose a company sells stock altogether and no bonds, and procures from the sale of that stock sufficient money to build its works, whatever they may be; how would the item of borrowed money come into it then, and interest?

A. There is a certain element of cost for organizing the company, that is, of selling its securities. These securities are sold in advance of the inception of this project, or it is carried on perhaps simultaneously. Now, we must borrow the money to pay interest on our borrowed money for the bonds and for the advancing of the work.

Q. Your estimate of $715,520 as of 1914, and $1,439,082 as of 1920, is, as I understand it, your opinion as an expert of what it would cost in those respective years to have reproduced the property at Paducah?

A. Yes, sir.

Q. And is not based upon what you think the property is now worth?

A. No, sir; based on my estimate of cost to reproduce this property, based upon conditions that exist in Paducah and the prices that prevail and methods of doing the work.

Q. In arriving at a fair estimate of what the property is worth for the purpose of allowing the owners of that property a fair return upon the investment, which we may arbitrarily fix at eight per cent., or six per cent., or ten per cent., it is based upon the money that is put into it, or the value of the property at the time when such estimate is made?

A. That is, you ask me upon what prices or upon what
123 value or what method of arriving at a value the rates are predicated; is that it?

Q. Yes, sir, that is it.

A. Rates, as you no doubt know, have been predicated on a fair return on the reasonable value of the property. Now, this value of the property has been determined in a great number of ways, the most common of which is the cost to reproduce, new as of a certain date.

Q. Yes. Now, then, let me ask you this question. Suppose that a property has been constructed at a cost of two million dollars and by reason of conditions, which do not include depreciation in any way, that property for the purpose for which it was constructed is nonproductive, but still a going concern but non-productive from the standpoint of profits, and it was by reason of that fact alone worth only a million dollars—in other words, a valuation of a million dollars would allow a reasonable return to the owners of, say, eight per cent on the money, or six, or ten, as the case may be—then, in arriving at the value of that property for the purpose of giving to the owners an equitable return upon their holdings, what would be the basis of valuation?

A. If I understand your question correctly, you are implying that if prices fluctuate and prices should go down as of a given period——

Q. No, you do not catch my idea. Let me state it in another way. The prices have not gone down, but the conditions surrounding the property where it is located are such that the returns from that property are not sufficient to pay more than eight per cent upon a million dollars investment, or a reasonable return upon a million dollars investment, although there is two million dollars invested in it: then, if you were called upon to fix a value of that property so that a just and equitable return on its value—not its investment, but its value—could be obtained, what would you say then about it?

A. Well, I am merely testifying as an engineer as to the cost of reproducing, new this property. Now, under the conditions of which you speak I could in like fashion estimate the cost to reproduce, new as of different dates, and I could also form my
124 opinion as to the value of this property. Under the hypothetical question which you have given me, I am not prepared at this moment to state. I really do not know the property you mean; I do not conceive of such a property.

Q. This was hypothetical, altogether.

A. Yes, sir.

Q. Well, I will give concrete terms, then, in concrete cases, if you do not want to go into the field of hypothesis. Suppose that it cost $715,000, as you say, in 1914, to reproduce the Paducah properties, and suppose that it cost $1,400,000, as you say, to reproduce it in 1920, the Paducah properties as they now exist, and the returns from those properties did not pay more than six per cent upon $35,000, what would you say the value of the property was?

A. It would not influence me a bit as to the returns of this property. That is, I understand it will cost so much money to reproduce the property, and the property, the bare bones of the physical property will be worth so much money regardless of what it is earning. As to the intangible values, that is, good-will or going value, or any-

thing else, I am not prepared to estimate that at this time. That is, it does not change in my ideas the physical property as it exists on the street—it does not change in my eyes in accordance with business depression or business conditions as obtain in that locality.

Q. Well, don't you know, as a matter of fact, from your experience as a street railway observer and man, outside of your testimony as an expert on this question, that in a town the size of Paducah—25,000 or 30,000 people—in the last ten years the returns have been falling off continuously until they are now about forty per cent of what they used to be?

A. Yes. All street railways are in difficulties.

Q. All laboring under the same difficulty, are they?

A. Yes.

Q. By reason of automobiles and other things that have affected them?

A. Yes; that is part of it, yes.

Q. Well, now, does not that depreciate the actual value of the property?

A. No, not the physical property.

125 Q. I do not mean the cost of it; I am talking about the value of it.

A. You mean as an investment?

Q. I mean as a fact: put it up and sell it?

A. Yes, it is so, that public utilities can not establish a credit to secure new money for investment purposes because of the risk that they have not been granted adequate returns.

Q. But don't you know as a matter of fact that a street railway company in any town or city that has sufficient patronage to bring in a return that will yeild a profit of ten per cent will bring more money than the same thing would do if it only had a patronage that just about paid expenses?

A. Yes, sir; it would be worth much more money.

Q. Then, the value is not based upon the cost of construction but is based upon the return from the investment; isn't that so?

A. No, it is not.

Q. It is not so?

A. No, sir.

Q. Will you tell the Court what the value of a thing is based on?

A. The value of a public utility is based upon a number of things. One of these elements is the cost to reproduce, new, that is, the bare physical property. Another element is its intangible values, enhanced value, added to that. Others in certain instances are development costs. There are also the factors of the actual money invested in the property, and there are a number of other items. I am not discussing all of those along economic grounds. I am just discussion at this moment one phase that enters into the valuation of the property.

Q. You are willing, however, to go upon record as saying that the return on an investment has nothing to do with the value of the investment?

A. It has something to do with it, yes, sir.
Q. Sir?
A. It has something to do with it.
Q. I thought you said that it hadn't anything to do with it?
A. What I meant previously was it does not determine its value in its entirety.

Q. It does not determine its value bases upon cost of con-
126 struction, you mean?

A. No, it does not.
Q. But it determines its value as to its salable condition?
A. Yes, sir, it enters into that; yes, sir.
Q. You say that the same cost attaches to the sale of securities when they are sold by yourself as if you hired a financial institution to do it for you?
A. Yes, sir, it does. You have got the same printing to do, the same publicity work; you have got the same clerical work involved.
Q. The financial institution does the same thing you do or would have to do?
A. Yes, sir.
Q. Will you please advise the Court why a financial institution will sell securities for another man?
A. A financial institution will sell securities for another man for the reason that it is their business. They secure certain affiliations and associations that makes it possible for them to acquire intimate knowledge, perhaps, of institutions, from which they can secure profit by various means.
Q. Well, if it costs, then the same that it would you, how would they make anything out of it? Why not just go and do it yourself, if you can do it as cheaply as the other fellow?
A. For the reason that Stone & Webster is very unique in having the facilities for doing that. The other regular institutions, companies other than Stone & Webster, would not have such facilities. I am not perfectly familiar with this phase of the subject, having no reason for going into that subject in this company. However, I am informed that all such services are performed at cost.
Q. This four per cent depreciation that you were talking about, is that annually?
A. Yes, sir, annually; straight line basis.
Q. Twenty years would depreciate it eighty per cent, then?
A. Yes, unless maintenance and replacements were made. That fund, of course, takes care of it with ordinary maintenance.
Q. In twenty years, unless there were replacements and repairs, the thing would go to the devil, there would be nothing left; is that right?
A. Only scrap value; yes, sir.

Q. Then, the Paducah properties, still having the value
127 which you have testified to, have kept up their replacement values?

A. They have kept up a number of replacements.
Q. Have they taken care of the four per cent,?

A. They have not in its entirety, no, sir, so far as I am advised.

Q. How much would you say they had taken care of, of the four per cent.?

A. I cannot state definitely; I don't know definitely; but I would state that the property is in good condition now. Perhaps that is due to changes in—rather that may be due, perhaps, to the fact that the receiver was able to do a great number of things that one would not have been able to do under normal conditions.

Mr. Berry: That is all.

Redirect examination.

By Mr. Wheeler:

Q. Mr. Hahn, Judge Berry asked you some questions about value based upon earning capacity. The length of a franchise has something to do with the value of a public utility, hasn't it?

A. A great deal to do with it, yes, sir.

Q. The ability of the company to secure favorable consideration from the public authorities has a good deal to do with the value of the property, hasn't it?

A. Yes, sir, it has a great deal to do with it.

Q. Where a company has a franchise running for twenty years authorizing it to establish an earning rate as a franchise rate which would yield a sufficient sum to pay expenses and a reasonable rate of return on the capital invested, that would be a material factor in fixing value—such a franchise provision—would it not?

A. Yes, sir.

Q. Now, Mr. Hahn, if I understand you, in fixing a value upon these properties you have pointed out the method pursued by you to establish the cost of reconstruction?

A. Yes, sir.

Q. But you have not allowed or have not taken the bare cost of reconstruction as the only element considered by you in fixing the value of these properties?

A. No, sir.

Q. But you have a distinct opinion of your own, independent of the cost of reproduction, as to what the present reasonable market value of the property is; is that correct?

128 A. Exactly so.

Q. And, in reaching that conclusion, you have considered the length of the franchise, the franchise provision—no, you have not considered patronage with the public, I believe—the location of the property, its probable patronage, its present condition,—in fact everything surrounding the established Plant as it now exists, and upon that as a whole, considering the result of your investigations, you base its value and so state it; is that correct?

A. I have, yes, sir, all those elements.

By Mr. Tucker:

Q. On cross-examination, Mr. Hahn, you said that the company paid a broker for borrowing money; is that a fact?
A. Yes, sir.
Q. Then, the minute that money is borrowed for construction purposes, does interest on the money start?
A. Yes, sir.
Q. And that is the reason why you have included interest during construction on the borrowed money?
A. That is right.
Q. And that is entirely independent of the cost of selling the securities?
A. It is, absolutely independent.

Mr. Tucker: I think that is all.

Recross-examination.

By Mr. Berry:

Q. I want to ask one other question. Mr. Wheeler asked you on redirect examination if you had taken in consideration in arriving at the value of this property the franchise——
A. Yes, sir.
Q. —which the Paducah Railway Company now operates under. Did you?
A. Yes, sir, I have read that.
Q. Well, did you take into consideration the fact that that franchise fixed the rate of fare at six cents for an adult and a half fare for children under twelve and over five?
A. I did.
Q. With a provision therein that a readjustment of that rate should be made in the event the return was more than
129 enough to pay expenses and a reasonable return, but with no provision in the franchise for raising that rate?
A. I understood that such a revision would be made upward if necessary.
Q. You are basing your opinion upon that idea?
A. Yes, sir.
Q. Whether that idea is true or not you do not know?
A. It is my interpretation of that.
Q. If it is only your interpretation, it is all right. That is all.

130 Also the deposition of L. R. NASH, taken at the same time and place and for the purpose in the caption mentioned. Said deponent, first being duly sworn by said Notary Public, deposes and says, in answer to questions by Mr. Wheeler, as follows:

Q. What is your name?
A. L. R. Nash.

Q. Tell the Court, will you, where you live and what your business is?

A. My home is in Boston, Massachusetts. I am a public utility engineer in the employ of Stone & Webster, Incorporated, and have been for something over twenty-five years.

Q. During the course of your employment, Mr. Nash, have you given attention, and, if so, to what extent, to public utilities and the earning capacity of public utilities?

A. I have been familiar with designing, construction, management, administration and financing of public utilities during the major portion of my connection with Stone & Webster. I have studied the operation of utilities of all kinds, including electric railways, and have had the opportunity of becoming intimately acquainted with the methods of operation, the costs of properties, the methods of their financing, and other general matters bearing upon the problems of operation.

Q. Mr. Nash, state briefly, categorically, some of the properties with which you have been associated in a professional capacity, either in overlooking, or management, or otherwise, say in the last ten or fifteen years.

A. I have been intimately acquainted with all the Stone & Webster properties, including some thirty or forty. Shall I mention some of them by name?

Q. Recite them, please, some of them.

A. The properties that I have made appraisals of, or have had rate cases concerning in the Stone & Webster managed group,
131 include the Baton Rouge Electric Company, Beaumont Electric Light & Power Company, Blackstone Valley Gas & Electric Company, Central Mississippi Valley Electric properties, El Paso Electric Railway Company, Fulton County Electric Light Company, Fulton County Traction Company, Houston Electric Company, Jacksonville Electric Company, Key West Electric Company, Savannah Electric Company, Mississippi River Power Company, Northern Texas Traction Company, Pensacola Electric Company, Sierra-Pacific Electric Company, Tampa Electric Company, Cape Breton Electric Company, Tacoma Railway & Power Company. I have, in addition to these, made appraisals and conducted rate cases of a good many independent companies throughout the country.

Q. Mr. Nash, have you been acquainted with and are you now familiar with the history and present condition of the Paducah properties?

A. I have a general knowledge of this property and have had since its purchase about fifteen years ago, and have from time to time made some special examinations of its operating conditions, of its fares and rates, and have a general knowledge of its financial condition from time to time.

Q. From your experience, are you in position to speak as one acquainted with the attitude of the public in respect of the purchase of public utility securities and the earning capacity expected and required by the investing public from utility properties such as the Paducah properties?

A. I think so.

Q. Mr. Nash, recite some of the reasons, if there are any, that establish the rate of yield higher upon public utility properties than upon the ordinary security investments.

A. To start with, I might fix the basic rate for security investments in communities like Paducah at somewhere between six and seven per cent. A Great deal of money is loaned there, as in other places, on real estate, at not exceeding about fifty per cent of its value, at six per cent. In a good many places where I have examined the rate of money on such secured loans I found it somewhat higher than appears to be the case in Paducah, that is, seven
132 per cent., and in some cases as high as eight per cent. But assuming that six per cent. is a basic rate—and I might point out that that is no higher than the yield from some of our government issues made in connection with the war. At least, two of the Liberty Loarn or Victory Loan issues are yielding now more than six per cent. But, taking that as a basis, we come to a different class of investment which has not got the same security. Of course, any government loan has got the whole credit of the country or of the subdivision thereof which makes the issue. When you come to industries, and more particularly public utilities, there is not that security. They are subject to a considerable number of hazards that demand an increase in the return on the investment to take care of the risk. That is, an investor sets up in his mind at least a sort of amortization of part of his investment which he thinks is subject to risk; he will get some of it back, but he will not get all of it back. Among those risks I might mention the following:—that of competition. Public utilities are subject to competition, whether from their own kind or different kinds. An electric railway is subject to competition from jitneys,—we have seen that throughout the country during the past years, from automobiles, bicycles, and vehicular traffic of all kinds. The smaller the city the more the competition is, from walking, particularly. There are the risks of business depression, which have no effect at all upon government loans or loans based on real estate. In a community like Paducah there are certain domination industries and there is not the diversity of business that there is in larger cities. If, for instance, the tobacco crop fails, Paducah is very seriously hurt. Then there is the fixed character of investment in a street railway. It is nailed down in the street. If the business investment proves unprofitable, it cannot be taken up and removed. That has been attempted in some cases and they have been enjoined, and the general feeling is, and the law
133 is in some cases, that a public utility property once started must go on whether profitable or not. Another industry can pack up its machinery and move to a more favorable locality. A public utility cannot budge.

Public utilities, particularly railways, are subject also to burdensome ordinances and regulations. They are required to spend large amounts of money for paving that adds nothing to revenue but encourages other forms of traffic so that there is a real loss of revenue. They are subject to the requirement of putting their wire under-

ground from time to time. They are subject to fare regulatory measures that are unreasonable and that, until the time arrives when they can seek remedies in the courts, cause them to lose substantial amounts of money in a good many cases. They are required to make unprofitable extensions of their property and to outlying territory through the demands of real estate promoters and others. So that there is a constant drain on the property as a whole from the unprofitable portions that they are required to add to what may be reasonably profitable—what the companies, if they were left to themselves, would build and operate. They are subject to storms and floods, to losses of property and interruption of business, and I imagine that that is true in Paducah as much, if not more, as it is in the average city. There is the risk of epidemics which, as we have seen in the past few years, very substantially reduced the revenues of public utilities. There is the risk of labor disturbance in the industry itself or in allied industries. It was not so many years ago, if I recall rightly, that Paducah suffered from a strike of railroad employees in their shops. All those things reduce the revenues. They lead to risk of the saftey of the investment, as well as diminution or suspension of the return on the investment, all of which investors have to take into consideration in fixing the rate of return which they consider fair, in view of the menaces to principal or to the uniformity of return. If the return is fluctuat-
134 ing, the average, in the mind of the average investor, must be higher than it would be if it were constant.

The result of those various risks,—and I might mention a good many others, but those are the fundamental ones—is to make the rate of return, the rate of yield to investors—I will put it that way—a substantially higher yield than on secured loans, such as real estate and government securities. I might give a good many illustrations of what the investors actually demand from investments in public utilities. I have one in front of me which I think is typical of such investments in the United States,—the Consolidated Gas Company of New York, which recently offered twenty-five million dollars of eight per cent. notes. The Consolidated Gas Company with its subsidiaries, which include the New York Edison Company, is one of the strongest public utilities in the world. It has a satisfactory, stable business, and it has had a history of unusual stability. Those notes were sold at par. They yielded the investor eight per cent. Other investments, less stable, which I might mention—and I am picking in the vicinity of Paducah—are the Louisville Gas & Electric Company, which sold this year three and one hal- million dollars of eight per cent. Two and one half year notes, which yield the investor 8.45 per cent.; the Ohio Cities Gas Company, doing business in a considerable number of cities in Ohio, which sold ten millions of seven per cent. notes, four year notes, yielding eight per cent.

By Mr. Tucker:

Q. You mean by yielding——
A. Yielding investors.

Q. They *they* sold at less than par so that the investor makes more than the face interest?

A. Those were seven per cent. notes and they sold below par, at a rate below par, so that the yield to the investor would be eight per cent. That was calculated. The Union Electric Light & Power Company, a strong company in St. Louis, sold two and one half million dollars of seven per cent. three year debentures, also
135 yielding eight per cent.

Going back to perhaps what ought to be more secure investments in a government form, I call your attention to twenty-five million dollars borrowed by the Government of Switzerland on which the return to the investor was eight per cent.; and the French Republic, $100,000,000, due in 1945, on which the yield varies from 8.15 to 9.50, due to varying maturities.

These are all eight per cent or higher, and that is the yield to the investor, which is by no means the cost of the money to the company. That is what we are interested in in this particular case. The difference is the brokerage fees which the companies have to pay and amortize, and in some of these cases which I have just stated—for instance, the Ohio Cities Gas Company, while the yield to the investor was eight per cent, the cost to the company was 9¾ per cent. They have paid in some cases for brokerage alone as high as five, six and seven per cent, which spread over a period of two or three years, would mean, and does mean, on an average, somewhere between one and one half and two per cent as the added cost of money to the company over the yield to the investor.

I might go on one step farther, before getting through that discussion. All these things that I have referred to are returns on borrowed money. Now, only in the long runs something like two thirds, and preferably less, of the total investment funds require- by a public utility are obtained through borrowed funds. The rest must be in the form of stock, preferred or common stocks, or both; and the yield on securities of that kind, which are most subject to diminution or loss of return due to fluctuations in business and adversities of one kind and another, is appreciably higher than the cost of borrowed money. I would say that it would run at least two per cent higher, on the average, between preferred and common stocks. The preferred stock returns usually run nearly two per cent higher than the returns on borrowed money, and the common stock returns appreciably higher than the preferred, because the risk on the common stock is greater than the risk on preffer-ed.

136 So, to get the average cost of money to a public utility, we may say that if the utility is a firm, strong, established one, its basic rate on borrowed money may be eight per cent. If it is not, it may be as high as ten per cent. And the proportion, which we will say is not less than a third of the total investments, which must be in the form of stock would command at least two per cent higher. So that the weighted average return on the investment would be ten per cent, or possibly higher, and in a company with the financial history of the Paducah Railway Company, having gone through a receivership and never been a profitable company, the return would

be substantially higher than the average return from public utilities generally or even the average of the electric railways.

By Mr. Wheeler:

Q. Mr. Nash, the hazards which you have briefly enumerated which inhere in all public utility companies, especially railway companies such as we have in Paducah, has the effect of depreciating the salable values of its securities, does it not?

A. It does, yes. The market value of public utility securities is very much lower to-day than industrials of a more secure kind.

Q. How is that counterbalanced—in other words, how does the seller offset that depreciation to make it attractive to the investing public?

A. The seller, of course, must sell the securities at a sufficient discount so that the actual yield to the investor will compensate him for his risk.

Q. Then, if I understand you, with those elements of risk depreciating the value of public utility securities such as the Paducah Railway Company, the rate of interest which will attract the investing public must be a rate of interest sufficiently high to overcome the supposed or actual dangers of investment arising from the difficulties which you have enumerated; is that so?

A. That is absolutely necessary in order to get any money. The difficulty of getting money has been greatly enhanced lately, because the investment field has diminished, for two reasons. First,
137 there is an extraordinary demand for money. It takes twice as much money to do a certain amount of construction as it did a few years ago, and while the amount of money has increased, it has not increased in proportion, so that there is a proportionately higher demand from all classes of industry for money. Further, the amount of money available for investment in industries has been reduced by the enormous diversion of funds from large investors into non-taxable government securities. We have something substantially more that thirty billions of dollars of investment funds to-day in government or other non-taxable securities; and investment bankers, in going out after funds for industries, and public utilities in particular, are restricted to a new kind of clientele, the small investor, and they have to educate the small investor into a new means of investment with which he has previously been unfamiliar, which means that the cost of selling the security is higher; and brokerage is substantially higher than it was a few years ago, and the small investor demands a higher return for his money.

Q. Mr. Nash, you say that you are familiar with the Paducah properties?

A. Yes.

Q. You are measurably familiar with operating conditions there, too, are you not?

A. I am.

Q. Assuming familarity upon your part with the operating conditions and the cost of operation, considered in its broadest terms, what

sum, in your opinion, would it be necessary for the Paducah properties to earn—state that sum in percentages, too please—to enable the company to finance its securities?

A. To get money at all freely the Paducah Company should pay not less than ten per cent upon borrowed money. It would be quite impossible to go out into the market and sell any stock of the Paducah Railway under present conditions; it would be necessarily *be* restricted to borrowed money.

Q. Mr. Nash, do you wish to be understood as saying to the Court that, in your opinion, that percentage which you have given
138 is a fair return upon the invested capital?

A. I would qualify my answer by a definition of "fair return." If by fair return one means the return which investors demand for risks similar to the one in question, then ten per cent is a fair return and I cannot conceive of any other reasonable definition of what a fair return is; that is, the fair return is the rate which will cause money to flow into the property to the extent that is needed for its expansion.

Q. Whether fair or otherwise, you do mean to say that that is the necessary return in order to maintain the property?

A. It is unquestionably the necessary return.

By Mr. Tucker:

Q. Mr. Nash, what is the customary way of determining the amount which the company should be allowed as a depreciation annuity annually?

A. It is usually measured by a per cent of the value of the property. That method is used more commonly, much more commonly than any other.

Q. How is the amount arrived at?

A. It is arrived at, first, by estimating the possible life of the property, and then determining, of course, the amount of salvage value which might remain after the property ceases to be useful for railway purposes,—of course allowing for the fact that a certain part of the property, including real estate, is not subject to depreciation and that certain other parts are maintained mainly through operating expenses,—and those are the important factors. Considering all those, we then arrive at an adjusted percentage, at a weighted average percentage, I might call it, upon the fair value of the property representing the amount of earnings which should be set aside each year in order that the investment in the property may be fully protected, and that when these various elements of the property cease to be useful funds will be available for retiring them from the capital account.

Q. What is the weighted average life of a street railway
139 property?

A. Approximately twenty years is the average case. Some of the best authorities—the Wisconsin Railroad Commission, for instance, has fixed it as low as seventeen and a fraction years—seventeen and one half, I think; others at times have put it up a little

higher than twenty years. I think the best considered figures have averaged, probably, slightly lower than twenty years. That would mean that if the whole property were to be taken into consideration it would need five per cent, at least five per cent—and, based on some of the estimates, as high as six per cent on the straight line basis—to take care of the annual depreciation. But, allowing for the salvage value, if the property is subject to depreciation provisions, it is safe in most cases—I will say in an average case—to reduce that percentage to approximately four. Of course, each particular property has its peculiarities in some respects. As far as the Paducah property is concerned—I am rather fixing a percentage for that particular property—I do not know of any special peculiarites about it except this,—that it buys its power, has no power station of its own; so that that element of value is missing; and if the life of the power station were higher or lower than the average of the rest of the railway property, then that percentage would need adjustment. But the best considered estimates of the life of a power station are now about twenty years. So that no material adjustment is needed in additional percentage on account of that peculiar characteristic of this property. On the whole, I think that four per cent is a reasonable amount to provide for the current depreciation in the Paducah Railway Company property.

Q. And that four per cent should be taken annually from the earnings before any fair return is considered?

A. Yes, I think so. It is a necessary part of the cost of service and should be provided for from the revenues.

Q. Have you had some experience with other cases in determining this depreciation annually as part of street railways management?

A. I recently had a case in the Federal Court in Houston,
140 Texas, where the decision of the master, which was accepted by the Court, allowed four and one half per cent upon the value of the depreciable property, or something in excess of four and one quarter per cent upon the value of the property as a whole.

Q. In this case you were treating four per cent on the value of the whole property without distinguishing between depreciables and non-depreciables?

A. On the whole property for convenience, because it is essentially not a precise determination.

Q. Didn't you also have an experience in Galveston, Texas, along the same lines?

A. In Galveston, Texas, the allowance, if I remember rightly, was four per cent of the total value of the property.

Q. And some other experiences of similar nature which have come within your experience as an engineer as applying to street railway properties?

A. In two cases which I recently conducted in Florida, we contended for five per cent allowance because the properties were not in the same condition, not in as good condition as the Paducah property, and substantial sums were necessary to make up for past de-

ficiencies in the upkeep of the property, as well as in taking care of the current requirements in the future.

Q. In other words, in those cases there was some deferred maintenance?

A. Yes.

Q. In Paducah you do not think there is much deferred maintenance?

A. Oh, I think the Paducah property is in quite good condition. It has been reconstructed as to cars and tracks to a very substantial extent, and on the whole the property is in good operating condition.

Q. So that you would feel, in your judgment as an engineer and from the experience which you have had in these matters, that unless the Paducah Railway Company is enabled to earn at least four per cent as depreciation annuity, that some of its property
141 will annually be consumed by the public without compensation?

A. That is true.

Q. Now Mr. Berry, in cross-examining Mr. Hahn, talked somewhat about the effect on the value of a public utility of the amount of money that it could earn. Do you as an engineer believe that that is a fact?

A. I do not think that the earnings at any particular time of a public utility have any necessary bearing upon the real value of the property.

Q. For rate-making purpose?

A. For rate-making purposes, for the reason that, in the long run, a public utility property, as any other, is under the protection of the Federal Constitution from confiscation of its property rights, and if the rates in effect at any particular time result in a temporary depreciation of the market value of its securities—if those rates are so inadequate as to deprive the company of its property rights, it can go to court and see that those rights are protected and additional revenues allowed to the extent that the capitalization of net earnings, in the manner that investors have to determine the value of the investment, would give an amount at least equal to the actual investment in the property or its present value. So that I would say, as a general principle, that the fact that the rates at some particular time in effect may be such that the market value of the securities of a property is not equal to the investment, has no bearing upon the real permanent value of the property. Any other interpretation, that is, fixing a value based on the rate,—would, as has been so many times said, be reasoning in a circle——

Q. And a vicious circle at that?

A. And a vicious circle—and at any time a municipality would have it in its power arbitrarily to reduce the rate and thereby reduce the value of the property and get the value down to zero and get it for nothing.

Q. Which is just what the Constitution says it cannot do?

A. Precisely.

Q. You heard the testimony of Mr. Hahn here this morning and

have had a very wide experience in the appraisal of street
142 railway properties. In your judgment, is at least $855,000 the fair value of the Paducah properties?

Mr. Berry: I object to it as leading.
Mr. Tucker: I will reframe the question.

Q. What, in your judgment, would be the minimum value of a property such as Mr. Hahn has testified the Paducah property is, if you can give one? Now, it may be you may not feel that you can, but if you can I would like to have you state what it is.

A. I certainly think that the minimum value of the property should be placed at the sum which Mr. Hahn has mentioned as being the investment in the property,—$855,000, if I remember it rightly, and I should consider that below the fair value of the property, assuredly.

Mr. Tucker: Your witness.

Cross-examination.

By Mr. Berry:

Q. Why do you think that it is below the fair value of the property?

A. Because investments in industries generally throughout the country, throughout the world, have very much appreciated in value during the last few years. The evidence now shows that the cost of reproduction of this property is now more than one hundred per cent higher than what it was in 1914. There is nothing peculiar about public utilities in that respect. Industries generally have had at least that increase in values in the cost of reproduction of their properties. That increase in cost of reproduction has also been reflected by increases in value. Industries generally have earned very much more in the last few years than they did before, and in industries generally are entitled to the increase in value of their properties which comes from increase in cost, public utilities are entitled to an equal increase. They must be entitled to it, or they are discriminated against and they will be unable to secure new money to develop them.

143 Mr. Berry: Let the record show that I object to that part of the answer which is attempted to be an argument and not an answer to the question.

Q. Has the property, in your judgment, appreciated any in the last twelve months at Paducah—the last fifteen months?

A. There has been a comparatively small appreciation within that period, based upon the trend of prices of materials which enter into a property of that kind during that period. They are slightly higher now than they were twelve or fifteen months ago.

Q. Who owns that property now?

A. I do not think that I can give you a clear answer to that question. The company is directly owned by a holding company and

the securities of the holding company are owned by a widely distributed group of investors.

Q. It is in the name of the Paducah Railway Company, is it, now? That is a corporation?

A. Yes, sir.

Q. That corporation became the owner of this property in 1919, in the fall, did it not?

A. Yes, in the summer or fall, yes.

Q. At a fixed value of $825,000.

A. I do not recall the exact figures. I have heard 855 mentioned. Which is right I can't say.

Q. It brought all it was worth when it was sold at public sale by the receiver?

A. I am not at all sure that a sale of the character of the kind that was made in Paducah represents the fair market value. I am not sufficiently familiar with the details of that transaction to say. I know that many transactions of that kind do not represent fair market value.

Q. In your estimate of the necessity for earning ten per cent, which you call a reasonable return, that is based upon the value as fixed by Mr. Hahn, is it not?

A. Well, the ten per cent is based on the prevailing cost of money and risk of this kind.

Q. Well, I mean in figuring the amount to be returned, it is based upon the cost of reproduction of the property?

A. Yes.

144 Q. At the prevailing cost of reproduction now?

A. Of course, we have got two rather widely different exhibits of value in here. They differ by one hundred per cent or more. Whether it would be fair to apply ten per cent to the 1920 cost of reproduction, I am not clear. I do not think it would.

Q. You think that would be better to base it upon the prices of 1914?

A. No, I don't think that would be yielding an investor enough. What I had in mind in using that ten per cent was to apply it to the fair value of the property, which is somewhere between those two limits: not as high as the upper nor as low as the lower.

Q. Then your idea is that of that ten per cent four per cent would be taken to care for depreciation and six per cent to the investor?

A. Not at all. The four per cent is distinct and in addition to the ten per cent.

Q. In other words, it would have to bring in fourteen per cent, according to your idea?

A. Yes.

Q. Four per cent for depreciation and ten per cent to take care of the investor?

A. Ten per cent is necessarily the net amount which the investor is demanding nowdays. I might make myself a little bit clearer, if you wish my explanation of what that ten per cent applies to, in this way. Costs of living have gone up more than one hundred per cent and investors have just as much right to have their income

increased to the extent of the increased cost of living as the workingman whose wages have gone up one hundred per cent or more. If he needs double the income in dollars and the prewar valuation of public service property, or the rate of return, fair rate of return, was eight per cent, then an investor today ought to get on that prewar value sixteen per cent in order to give him the same purchasing power from his income. Now, he needs that sixteen per cent and he is demanding it in the money market, but he does not get it as sixteen per cent. If he is satisfied now with ten per cent upon the money he puts in, current money, then on his prewar investment he
145 must apply that ten per cent to a value of not less than sixty per cent in excess of prewar values.

Q. Have you ever been in Paducah?

A. Yes.

Q. Did you ever make a personal survey of the property there?

A. Not a survey. I have examined it.

Q. When was that, Mr. Nash?

A. The last time—let me see,—something like four years ago, I think. I have not been there since the receivership, when the present company was operating.

Q. In fixing the return upon an investment, you say that the value of the property in which the investment is made has nothing to do with it; is that true?

A. No, the fair value is the basis of the return. I said that the——

Q. I got my question wrong. What I meant was this. Your idea is that the return upon the investment has nothing to do with the fixing of the rates?

A. Well, the return is a factor in the rates; it is one of the elements of cost which determine the rates.

Q. Well, now, you don't mean to take the position that because a man makes a bad investment he is still entitled to a fair return upon that bad investment, do you?

A. Not necessarily, no. If a man makes an investment using obviously bad judgment, he ought to take the consequences.

Q. Well, would not that obtain in the case where a street railway company, like Paducah, had cost $855,000 and was not worth but $350,000?

A. It would depend upon what caused the so-called worth of $350,000.

Q. Suppose it was caused by reason of lack of patronage?

A. That would depend upon why there was lack of patronage.

Q. Because the people would not ride in the cars.

A. The facts of the case are, I think—I haven't quite the intent of your question—but Paducah, while a comparatively small city, is large enough to support a street-railway, and I base that judgment upon my knowledge of a large number of railways in cities
146 of the size of Paducah,—at a reasonable fare. Now, at the present time, five cents, or six or seven, is not a reasonable fare, and the revenue from such a fare would not yield a sufficient return to investors so that the securities he holds would be worth their par value.

Q. You mean reasonable return upon the amount of money invested, upon the value of the property that would be arrived at by reconstruction prices at this time?

A. What I mean is the fair value of the property as it stands, taking into consideration all the factors which have weight in determining that fair value, among which are cost of reproduction——

Q. How do you arrive at that fair value?

A. It is a matter of judgment, necessarily. The courts have held that the reproduction method is entitled to more weight than actual investment or anything else. But not necessarily that that has exclusive weight. There is no rule for giving the fair value to a public utility property that can be applied indiscriminately.

Mr. Berry: That is all.

Redirect examination.

By Mr. Tucker:

Q. Mr. Nash, you have made a considerable study of going concern value of street railway properties?

A. I have.

Q. Will you sketch in a general way what the going concern value of a street railway property consists of?

A. There are two perhaps distinct elements in that value. One, the cost of taking the bare bones of the physical property initially——

Q. That is, the property as newly constructed?

A. Newly constructed—and converting it into an active, operating entity, which means the getting together of an operating organization, training them in their duties, not only operation of cars, but operation of power station; the getting together of an office organization——

147 Q. Give the details of that. Would it be necessary to do that before you started operating?

A. Take the power station, for instance,—one of the things I mentioned. Before the property——

Q. Let us confine it, if you will, to things that this company has. This company does not own a power plant. Let us confine it to things that it has.

A. First the transportation department must have a superintendent. He must be employed before the property begins to operate long enough to collect a full staff of operating employees,—motormen, conductors, inspectors; they must all be trained in their duties. Motormen and conductors must operate the cars over the designated routes and be trained in making out trip sheets and other reports of operation. The office force must be instructed as to how to handle the cash when it comes in,—the methods of accounting and an infinite number of motions have to be gone through so that the employees may, when the service starts, be fairly familiar with their duties that no interruption of service or confusion arise. That same program must be followed through the entire organization. After

the company is operating, every street railway experiences a lack of earnings because the territory which its trackage covers is not populated sufficiently to yield an adequate revenue. People are not accustomed to riding on the cars and the revenues are inadequate, but there is a demand, and a reasonable demand, on the part of the community that when the railway system is laid out it shall serve outlying territories that are logically a field for new residential sections or industrial developments——

Q. And that is an experience common to every street railway that you have ever known anything about, is it?

A. Every street railway that I have studied has in its early stages lost money. The investors claim that where that money has been reasonably, wisely invested, and such losses have been experienced,
that they must have a right to either make it up in the future
148 or to capitalize it, and the decisions of courts have held that
capitalizing it is the fairer method; it distributes the burden indefinitely instead of spreading out over a certain few years. And I might state further that the development cost of a street railway is not necessarily confined to the earlier years of the property, because from time to time communities insist on extensions being built out into the country where new residential or industrial sections are being developed, and those lines individually are necessarily unprofitable for periods of greater or less extent, that is, they are a drag upon the property as a whole and may mean that the property as a whole pays less than a fair return on the investment, so that in most street railways development cost is a continuing factor.

Q. Now, you have made development cost studies in a great many companies, haven't you, in your experience as an engineer?

A. I have.

Q. What in your opinion, would be a fair amount to allow as a going concern value of the Paducah Railway Company?

A. I have not made an historical study of the operations of the Paducah Railway Company, but——

Q. I mean speaking from your experience as an engineer and from the conditions as you know them to exist?

A. Generally, I have found from twenty-five per cent. upwards as the accumulated losses under a fare return—deficits in the early years of electric railway operation. The Paducah property has been probably less profitable than the average railway that I have studied. So that the actual cost, the actual losses which it has incurred I feel confident are substantially higher than twenty-five per cent. of the
investment in this property, and twenty-five per cent. of the
149 1914 cost of reproduction would be something like $180,000.
I certainly think that the fair going value attached to that property would be not less than that and might be considerably more.

Q. So that there wouldn't be any doubt in your mind but that the fair going concern value for these properties would at least offset the determined accrued depreciation?

A. At least, yes. The accrued depreciation Mr. Hahn testified was about $100,000.

Q At 1914 prices?

A. At 1914 prices, and about double that for 1920. I certainly think that the development cost has exceeded the accrued depreciation.

Q. And you would say, as an expert, that the very least consideration in this case that ought to be given is to allow sufficient going concern value or development cost to offset depreciation?

A. Yes.

Mr. Tucker: That is all.

(Adjourned to 2 P. M.)

RICHARD J. MARTIN.

150 Afternoon Session.

(Met pursuant to adjournment.)

RICHARD J. MARTIN.

Also the deposition of A. S. NICHOLS, taken at the same time and place and for the purpose in the caption mentioned, said deponent, being first duly sworn by said Notary Public, deposes and says, in answer to questions by Mr. Wheeler, as follows:—

Q. What is you- name?

A. A. S. Nichols.

Q. Where do you live, Mr. Nichols?

A. Paducah, Kentucky.

Q. What is your business?

A. I am manager of the Paducah Railway Company and Paducah Electric Company.

Q. Mr. Nichols, are you familiar with the properties of the Paducah Railway Company from supervision and personal inspection?

A. I am.

Q. How many times have you inspected the properties of the Paducah Railway Company?

A. Weekly.

Q. Where are the accounts of the Paducah Railway Company kept?

A. Paducah, Kentucky.

Q. Under whose supervision and who is responsible for the accounts and books of the Paducah Railway Company?

A. The assistant treasurer.

Q. I ask you under whose supervision are these accounts kept; who has charge of them?

A. The direct supervision is the assistant treasurer.

Q. Well, under whom does the assistant treasurer work?

A. Under myself.

Q. Then, you are the principal officer of the company having charge of these books and custody of its record?

A. Yes, sir.

Q. The assistant treasurer is a subordinate of yours, is he?

151 A. Yes, sir.

Q. Mr. Nichols, do you examine the entries in the books of the Paducah Railway Company?

A. No, sir.

Q. You never examine its books?

A. I do not examine its books. I examine its journal entries and financial reports monthly.

Q. What are the journal entries and monthly reports?

A. I examine and sign all vouchers evidencing payment of bills, all journal entries recording the transaction of the company, and the financial reports, which is a monthly resumè of the operations of the company.

Q. Do you concern yourself to ascertain whether or not the entries having to do with the affairs of that company are correctly entered, to see whether or not they are proper and right?

A. I do.

Q. Then, in testifying in respect of that matter, you can speak from your personal knowledge, can you?

A. I can.

Q. Do you keep a record of the number of passengers hauled by the Paducah Railway Company monthly or annually?

A. We do.

Q. I wish you would tell the Court the number of passengers that were carried by the Paducah Railway Company from the first day of October, 1919, to the first day of October, 1920?

A. 2,636,337.

Q. Where do you obtain that information?

A. From the records of the company.

Q. Records kept under your supervision?

A. Yes, sir.

Q. Is that an accurate and true statement of the amount of passengers hauled by you during that period?

A. Yes, sir.

Q. Mr. Nichols, did the Paducah Railway Company carry on its set of books during the period October 1, 1919–October 1, 1920, a statement showing the amount of money received and the amount of expenses incurred by the company in the operation of the properties during that period?

A. Yes, sir.

Q. Was that record kept under your supervision?

A. Yes, sir.

Q. Do you know whether or not the entries made in respect of that account are accurate and true?

A. Yes, sir.

152 Q. What was the total revenue of the Paducah Railway Company for the period from October 1, 1919–October 1, 1920?

A. The total receipts or gross earnings were $159,461.

Q. What was your total operating expenses?

A. $123,700.

Q. What do you include in that operating expenses?
A. The total operating cost of way and structures, the total operating cost of equipment, the total operating cost of traffic, the total operating cost of conducting transportation, and the total general and miscellaneous costs.
Q. Do you include salaries of employees in there?
A. Yes, sir.
Q. Include taxes?
A. No, sir.
Q. You did not include taxes in that?
A. Not in operating expenses as I have given them to you. The taxes are a separate item.
Q. Well, I would like you to give me the total expenses including taxes?
A. The total operating expenses including taxes is $129,590.
Q. In that $129,590.95 do you embrace any interest on bonds?
A. No, sir.
Q. Do you know, on the amount of bonds outstanding or stock outstanding on the first day of October, 1920, what your interest charges were?
A. There are no bonds on the Paducah Railway Company.
Q. Well, stock?
A. I can give you the stock outstanding, approximately. $825,000.
Q. Does your operating expenses include any interest on that?
A. No, sir.
Q. What would be the interest on that at six per cent for twelve months?
A. $49,500. Is that figure based on $854,000 and some odd dollars and cents, the physical value as it then existed?
Q. Well I will develop it. Was there stock issued against the total development of the property at the time you refer to, or was there a development that had not been capitalized?
A. There was construction in addition to the original cost
153 of the property that had not been capitalized.
Q. What did that construction amount to?
A. You want it——
Q. Wait a moment. I can tell you myself.
A. You want it as of October 1, 1920?
Q. I think it is $39,702.02, Mr. Nichols.
A. The actual figure is more than that. $42,186.83.
Q. In figuring your return upon outstanding stock on a six per cent basis, have you embraced that $42,000?
A. No, sir.
Q. And what figure did you give the outstanding stock to be?
Q. $825,000.
Q. Will you please tell me what eight per cent interest on that would be for the period mentioned?
A. $66,000. That is, on the stock alone.
Q. And the latter figure you have just given me does not con-

sider the $42,000 of betterments and improvements which you put in?

A. No, sir.

Q. Since the first of October, 1919?

A. No, sir.

Q. Mr. Nichols, figuring a six per cent return of interest on the stock issued, what would be the result of the company's operation for the year ending October 1, 1920?

A. There would have been a deficit of $37,532.

Q. What would be the experience of the company in respect of its expenses based upon eight per cent allowance for the stock outstanding?

A. That figure is based on eight per cent I have just given you.

Q. Give me the one based on six per cent.

A. No, it isn't, either. What did you give the percentage?

Q. Eight per cent.

A. Yes, that is at eight per cent.

Q. Give it on the six per cent basis.

A. The operating deficit then would have been $21,032, not including depreciation.

Q. Are you not wrong about that on the six per cent basis? Wouldn't that be $39,000? You had an operating expenses of $129,590.95, including taxes, didn't you? Add taxes to your operating expenses.

A. $129,590——

154 Q. As operating expenses.

A. As operating expenses.

Q. Now, you had a gross receipt of $159,424 didn't you?

A. Yes.

Q. Now, allow six per cent. on $825,000 and add that to $129,590, and deduct it from your gross receipts and see where it leaves you?

A. That would result in a deficit of $25,519.

Q. Mr. Nichols, do you know what the Paducah Railway Company paid for its properties?

A. Approximately $825,000. I am not sure of the exact figure.

Q. It is true, then, that the outstanding stock during the period mentioned by you represents the purchase price of the property; is that correct?

A. So I am informed.

Q. Now, in your estimate of operating expenses have you considered the element of depreciation at all, made any allowance for depreciation in your operating expenses, from the figures you have testified about?

A. Yes. Not in these, I haven't; no, sir.

Q. In your experience as a street railway operator, have you formed, and have you now an opinion as to what is a reasonable percentage to be assumed as an annual allowance for deduction to take care of depreciation?

A. Yes, sir.

Q. What would that figure be?

A. Four per cent. of the physical cost of the property, physical value of the property.

Q. Can you state what four per cent. would be of that amount, assuming that the property was purchased at its real value?

A. You also want the additions to property, too, don't you?

Q. Well, you can take the additions. It does not make any material difference.

A. $34,687.44.

Q. Assuming that you were right to make that deduction, Mr. Nichols, what would be the result of your experience in the operation of these properties for twelve months, making an allowance now for depreciation?

A. There would have been an operating deficit of of $60,206.44.

Q. Mr. Nichols, on the first day of September, 1918, what, if anything, happened to the Paducah Railway Company?

155 A. It went into the hands of a receiver.

Q. Under the supervision of what court? The McCracken County Circuit Court.

Q. Who was the Receiver?

A. Roscoe Reed.

Q. Who was the operating agent of the Receiver during the period of receivership?

A. I was.

Q. What had the company been receiving for adult and children passengers prior to the date of the receivership?

A. Seven cents fare, discount fare of six cents when tokens were purchased, and a half fare of three and one half cents, or two half fares for seven cents.

Q. Who was the active operator of the company prior to its receivership? Who had charge of it as manager?

A. I had.

Q. Was the trackage and equipment of the company before receivership practically what it is now except for some additions and betterments?

A. It was in length, single track equivalent, about a mile longer.

Q. Now?

A. No, then.

Q. Than now?

A. Than now.

Q. What is the reason for that decrease in trackage?

A. The so-called Fisherville line, which is about a mile long, was abandoned.

Q. Why did you abandon it?

A. Because it was paralleled by the Sixth Street line and by the Third Street line, each an average distance no greater than two blocks from the so-called Fisherville line. The Fisherville line had been for a number of years unprofitably operated, more so than any of the other lines.

Q. You abandoned it because it was unprofitable and did not pay the cost of upkeep, didn't you?

A. Precisely.

Q. Mr. Nichols, prior to the receivership, and while you were getting a seven cent fare, what was the experience of the company? Did it make money or lose money?

A. It operated under persistent deficits for a number of years—in point of fact, from the time the present management took
156 over the property in 1905.

Q. Now, after the receiver was appointed in September, 1918, what length of time did he operate?

A. A Year.

Q. You say that you were his operating agent?

A. Yes, sir.

Q. Had charge of the books of the company under his supervisions?

A. Yes, sir.

Q. And knew its receipts and expenditures?

A. Yes, sir.

Q. What fare was he getting?

A. Seven cents, a discount fare of six cents, half——

Q. Did he make or lose money?

A. The property made its operating expenses for the year, but of course it did not make a sufficient amount to pay any return upon the investment in the property.

Q. Do you mean by that it paid operating expenses and that is about all?

A. Operating expenses and taxes.

Q. Mr. Nichols, what is the character of the trackage of the Paducah Railway Company,—what I mean, is the character of construction over the streets that are traversed by this railway?

A. The major portion of the trackage is laid in gravel streets; about one fifth of it is in paved streets; about a mile of the track is through the company's right of way and that type of construction is known as open work or open track construction.

Q. Name the improved streets, either of brick or asphalt, which the railway company's tracks traverse?

A. Broadway from 17th Street to the river is double tracked from 17th Street to 11th Street; from thence it is singled to Fourth Street, and double tracked from 4th Street to the river.

Q. Wait just a moment. Mr. Nichols, aren't you wrong about that?

A. No.

Q. Isn't it double tracked on Broadway all the way out? Am I wrong about that?

A. It is double track to 6th street.

Q. Yes.

A. From 17th Street to 6th Street,—you are right sir.

Q. And then single track from 6th Street——

A. From 6th Street to 4th Street, and double track from
157 4th Street to the river. The so-called 3rd Street line operates over a brick paved street from Broadway to Broad Street.

Q. State in miles or blocks.

A. The track on Broadway traverses a bitulithic and wood-block

paved street for a distance of seventeen blocks. The 3rd Street line operates over a brick paved street for a distance of fifteen blocks.

Q. Go Ahead.

A. There are extensions of that paving for a distance of two blocks on 6th Street in a southerly direction, and a distance of two blocks on 6th Street in a northerly direction. On 4th Street, in a northerly direction, a so-called "Rollingtown" line traverses a brick paved street for a distance of one block. The so-called "Loop" branches off the Broadway line at 4th Street, passing from thence to Kentucky Avenue and running north a block, tying in with the 3d Street line and returning to Broadway over brick pavement, making a total of three blocks in all.

Q. And the 9th Street line, depot line?

A. Yes, the so-called Union Station line traverses a bitulithic paved street for a distance of one block.

Q. Now, on all those streets which you have named, what is the character of construction?

A. There is a concrete sub-base approximately six inches thick below the paving; upon that rest the ties, which are filled in with concrete—the interstices between them are filled with concrete.

Q. Isn't it true that that concrete above the ties is brought flush with the surface of the street, with the top coating of the street, and then asphalt laid on top?

A. Yes, that is true, as a general rule.

Q. What sort of rails do you use there?

A. The major portion of the rail is a 65-pound rail.

Q. Known as the T rail?

A. On Broadway.

Q. Now, the rest of the construction of the roadway, Mr. Nichols,—having to do with the roadway within the corporation limits of the city,—what is the construction there; how is your road laid down there?

158 A. The ties are laid in the gravel street below the surface of the grade and the roadbed, of course, being flush with the grade of the adjacent street.

Q. Is there an excavation of base for those ties over the clay?

A. No.

Q. The ties are laid on the clay?

A. No sir, the ties are laid in a gravel roadbed.

Q. Do you mean by that that the sub-base of the tie is laid on a gravel base?

A. Yes, sir. It is necessary to excavate over the entire portion of the roadbed to construct that—entire portion of the track to construct that roadbed with gravel before the track is laid.

Q. Isn't it a fact that you dig a channel so as to bring the base of the tie flush with the surface of the street, then dig a small channel underneath the tie, fill that with gravel, lay your ties on that and fill the interstices with gravel flush to the top of the street; isn't that the process?

A. As a general rule, yes.

Q. Mr. Nichols, is there any difference between the life of a tie

and the life of a rail over the street constructed such as you have described first above, and that of your latter description, and, if so, which endures the longest?

A. The track in the paved street would have the longer life.

Q. Do you know what the life of a tie is?

A. Approximately seven years,—the character of ties we are able to purchase in Paducah.

Q. Do you know the life of a rail in the unimproved street, as contrasted with the life of a rail in improved streets?

A. I believe that the rail in the improved street would have a life expectancy of approximately twenty years, and that in the gravel street a life of approximately fifteen years, under conditions we are operating in Paducah.

Q. What sort of posts do you use for your trolley and guy wires

A. Generally white oak.

Q. Have you anything but white oak poles?

A. Yes, sir.

Q. What are they?

A. We have a great deal of red oak.

159 Q. Have you any metal poles?

A. No, sir.

Q. Don't you use metal poles on Broadway to 11th street?

A. There are a few metal poles, but they are so few that I would not say we had any metal poles.

Q. What is the life of a pole?

A. In earth, twelve and one half years.

Q. What size trolley wire do you use?

A. Feeder?

Q. No, the trolley wire; what is the size of it?

A. I haven't the capacity of that trolley wire, the size of it, in mind, Mr. Wheeler.

Q. Do you know what its life is?

A. Under the conditions under which we are operating in Paducah, approximately fourteen years.

Q. Mr. Nichols, have you an opinion as to what would be the result upon the company's finances if you operated that system under a six cent fare?

A. Yes, sir.

Q. What would be the result to the company?

A. Ultimately the property would be forced into receivership again. It would not earn sufficient from the volume of traffic available in a town of that size to meet its fixed charges.

Q. Now, what do you mean by its fixed charges?

A. I mean its taxes, its depreciation, and a reasonable return upon the investment.

Q. Mr. Nichols, would a six cent fare pay the actual cost of operation,—what I mean by that is the salaries of its motormen, trainmen, machinists, office expenses, including superintendents and manager, its upkeep and repair,—eliminating the idea of depreciation and money for capital invested?

A. I think that its gross earnings, with the company operating

at a six cent fare and a half fare of three cents, would about equal the operating expenses of the property, not including taxes or depreciation.

Q. You say it would include depreciation?

A. Not including depreciation.

Q. So that that experience, if persisted in through a number of years, would result in what, if there was no allowance made
160 for depreciation?

A. It would result in the wearing out of the property and the necessity of replacement, which the company would not have funds available to replace.

Q. Do you not mean that it would be dedicating that property eventually for the purpose for which it is designed without paying for it?

A. It would.

Q. Mr. Nichols, how much of that trackage *in* outside of the corporate limits of Paducah, approximately?

A. About a mile and a half.

Q. Is that system operated as an entity?

A. It is.

Q. The ordinance passed by the city of Paducah fixing the fare at six cents, then, if I understand you, applies to your system as an entity, including that outside the city as well as that in the city?

A. That is true.

Q. The Board of Commissioners, then, undertook to regulate fares you should charge outside of the city.

Mr. Berry: Note an objection to that, because the ordinance will show for itself and the Court will do its own construing.

A. So I understand.

Q. As a matter of fact you made no separation of your fares between the suburban dweller and the urban dweller riding on your car?

A. It wasn't a practical thing so to do.

Q. Mr. Nichols, do you furnish transfers on all your lines from one to the other?

A. We do.

Q. Any charge made for it?

A. No, sir.

Q. A man boarding your car up in the mill district in the south end of the town, say at Mill Street, and leaving the car either at the part or at "Rollingtown," how far would he ride for the fare that you charge him; about how far?

A. Approximately three miles.

Q. And with transfers he could ride how far?

A. About five miles.

Q. Could he go over the entire system with a transfer?

A. He could.

Q. That is approximately fifteen or sixteen miles, isn't it?
161 A. Approximately.

Q. You are measurably familiar with the attitude of the public in respect to the fare you have installed, are you not?

A. I am.

Q. You have concerned yourself to inquire as to how the public was receiving this increase in fare that you have installed, have you?

A. Yes, sir.

Mr. Berry: I object.

Q. Tell the Court whether or not you have received any protests from the traveling public in respect of these fares, and if so, to what extent have the protests reached you?

Mr. Berry: Note my objection to that.

A. No protests have reached me at all.

Q. Have you concerned yourself to investigate whether the public was satisfied with the fare now installed or not?

A. I have.

Q. What conclusion have you reached after those investigations?

A. That the public was favorably disposed to pay us what was a reasonable fare.

Q. Well, if you made an investigation to ascertain, how do the traveling public regard the fare established by you now?

A. The majority of patrons on our cars seem to feel that we are entitled to a ten cent cash fare. There is very little objection on the cars.

Q. Mr. Nichols, what is the most intensely patronized line that you have?

A. The park line and the Union Station line.

Q. When you say the park line do you mean the Broadway line?

A. The Broadway line.

Q. What is your schedule of service on Broadway?

A. Ten minutes.

Q. What is your schedule of service on the Union Depot or 9th Street line?

A. Ten minutes.

Q. Now, you have a line commencing at the northerly end of the city, or the southerly end of the city, a cross-town line known as the 6th Street line and traversing it from the north to the south end, have you?

A. We have.

162 Q. That is about how far; what is the distance?

A. Approximately three miles—three and one half miles.

Q. What is your schedule on that line?

A. Twenty minutes.

Q. Mr. Nichols, have you established an arbitrary ten cent fare?

A. No, sir.

Q. Is there a discount?

A. There is a discount fare where tokens are purchased.

Q. What do you mean by a token?

A. A metal disc similar to a coin which can be purchased at the various agencies of the company about the city. There are about fourteen of these agencies located at convenient points in various districts.

Q. What is the discount when a traveler purchases his tokens?
A. If he buys five or more tokens he can purchase them for 7½ cents apiece.
Q. Where are your agencies located? Describe them briefly so the Court will understand. The Court knows Paducah. Tell the Court where those agencies are located, briefly.
Q. There is an agency at the corner of Broadway and 5th Street. There is another at the Corner of Broadway and 4th Street. There is an agency at Roberts' drug store on 3d Street, and in other drug stores throughout the various districts served. I don't know the names of them.
Q. Fourteen of them in all?
A. Fourteen in all.
Q. Scattered broadly?
A. Scattered broadly over the city, yes.
Q. Have you ever heard any complaint of the inability of the traveling public to procure tokens?
A. No.
Q. Mr. Nichols, have you any personal knowledge of the fluctuation of prices in respect to labor and material having to do with the Paducah Railway Company in the last few years?
A. Yes, sir.
Q. Has there been any fluctuation?
A. There has been a great increase in the cost of material.
Q. What has been the increase, if any, stated in percentages, in the pay of your trainmen, motormen on your cars, from 1914 to 1920?

A. I am quoting the comparison as of today. It is 107
163 per cent.

Q. Do you use any common labor?
A. Yes, sir, a great deal of it.
Q. How do you use it?
A. In track work, maintenance work at the barn.
Q. Has there been any increase in that in the period mentioned?
A. Yes, sir, 133 per cent.
Q. Have you had occasion to buy any rails?
A. Yes, sir.
Q. What has been the increase in the price of rails during the period stated?
A. 197 per cent.
Q. What has been the increase, if any, in the price of ties, white and red oak?
A. 178 per cent.
Q. Has there been any increase in the price of spikes during that period?
A. I haven't got the statement of the increase in spikes, but I think it is approximately 175 per cent.
Q. Have you bought any wheels?
A. Yes, sir.
Q. What has been the increase in the price of car wheels?
A. About 115 per cent.

Q. Have you bought any trolley wire in that period?

A. Yes, sir.

Q. What has been the increase in that?

A. The cost of copper has decreased considerably in the last two or three months. The increase was very much in excess of the present price.

Q. Well, what is the present price?

A. The present price is 56 per cent over 1914.

Q. Do you use any oil?

A. Yes, sir.

Q. Greasing curves and so on?

A. Yes, sir, that has increased materially during the last four or five months; 189 per cent over 1914. Car oil, 195 per cent.

Q. Has that increase, especially referring to the cost of trainmen, reached a peak?

A. I think it has. I think it may be stated that the permanent price levels, looking forward over a period of five years, will be ultimately 40 per cent less than the existing prices. That is my personal opinion.

Q. So, from now on, you think that they will be either stationery or will decrease?

A. I think there will be slight decreases—decreases amounting to 40 per cent from the present level.

164 Q. Going back, Mr. Nichols, to the period of the receivership, what did you do with the money, as operating agent of the receiver, that was actually taken in by him and not utilized?

A. We paid the operating expenses of the company, but we found that there was a great deal of deferred maintenance and depreciation on the property. That made it necessary to immediately expend large sums to put the property in shape. The track was in very bad condition. The cars were in very bad condition. So, under authority of the McCracken County Circuit Court, we started to take the funds which were in excess of the actual operating expenses and put the track in condition by relaying ties where they had worn out, rail joints and other track material, painting the cars and rebuilding the same.

Q. Then, as a matter of fact, when this property was taken over by the present owners, it was in better condition because of what you just said than it was at the time the receivers took charge of it, wasn't it?

A. Very much better condition.

Q. Do you know how much money you expended for the purposes stated by you during the period of the receivership; approximately how much?

A. Approximately $30,000; but since the period of receivership we have spent approximately $60,000 on deferred maintenance.

Mr. Wheeler: I think that is all.

Cross-examination.

By Mr. Berry:

Q. Mr. Nichols, if I understand your testimony, the gross receipts of the Paducah Railway Company, now called, formerly the Paducah Traction Company before it became the property of the present corporation, from October 1, 1919, to September 30, inclusive, 1920, was 159,000 odd dollars?

A. $159,461.

Q. Now, the expenditures, including taxes, were $129,-

165 & 166 509; is that right?

A. That is right, sir.

Q. The other items which you claim to be figured in the amount to be charged, or ought to be charged, are just two:—depreciation and interest on the $825,000 investment; is that right?

A. Plus the additions to the plant since the property was acquired, but has not been capitalized.

Q. That is, $42,000, in round numbers, isn't it?

A. That is $42,186.

Q. In other words, you figure that $42,000 ought to be added to the $825,000; is that right; and then interest figured on that?

A. Yes, that is true.

Q. Now, the interest on $867,000, assuming, as you say, that the property would cost that to reproduce, or rather, the capital stock and the improvements together, is $69,360, isn't it?

A. Figuring at six per cent?

Q. Eight per cent.

A. I figure that as $69,374.88.

Q. Now, the depreciation is four per cent, I believe you stated. Figure on that, it would be what?

A. $34,687.44.

Q. Those three items are all, aren't they, that ought to be taken into consideration?

A. Assuming that eight per cent is a reasonable return from the investment, yes.

Q. What do those three items total?

A. 104,062.32.

Q. It is more than that. You mean 204?

A. Oh, no; $104,062.32 at eight per cent.

Q. I mean the three items including $129,590.

A. Oh, the operating expenses?

Q. Yes.

A. Expense and taxes.

Q. Operating expenses and taxes in one item, the interest on what you claim the investment in another item, and the depreciation—all three together, what do they total?

A. $233,652.32.

Q. Now, then, you say that you carried how many passengers in that period of time?

A. 2,636,337.

Q. Are you not mistaken about that and didn't you carry 2,979,645?

A. No; 2,636,337.

167 Q. What was the average receipt per passenger?

A. Approximately six cents.

Q. Wasn't it 5.32?

A. No, it is 6.1 cents.

Q. Did you write a letter to the Mayor and Board of Commissioners on September 17, 1920, of which this is a copy (showing letter to witness)?

A. Yes, sir.

Q. To which you have appended a statement showing the receipts and disbursements of your company?

A. Yes, sir.

Q. The number of passengers carried and the average fare?

A. Yes, sir.

Q. Was that correct at the time made?

A. A portion of that was estimated.

Q. What portion of it was estimated?

A. The month of September, part of the month of August.

Q. Would the estimate of the months of August and September make any material difference in the average fare?

A. Yes, it might. It would depend upon the number of passengers hauled to the Fair. The McCracken County Fair, which was held that month, or the month of September, rather, and the volume of passengers which we hauled to the circuses during that period.

Q. You say that the average fare was 6.1 cents?

A. That is the nearest unit figure, yes, sir.

Q. In other words, the fare at 6.1 cents on the two million six hundred and odd thousand passengers brought in a revenue of $159,461?

A. Including the miscellaneous—that gives earning includes the miscellaneous revenue from advertising in the cars.

Q. That is what you call, in this report to the City Commissioners, station and car privileges and miscellaneous?

A. Yes, sir.

Q. The amount was $986.69?

A. Yes, sir.

Q. Well, if 6.1 cents on two million six hundred odd thousand passengers will bring in a revenue of approximately $159,000, what average fare would be necessary to bring in $233,652.

168 A. Approximately nine cents.

Q. Don't you know, if you figured it, it wouldn't exceed 7.75?

A. 8.85.

Q. How much would the total expenditures, four per cent depreciation and six per cent interest amount to?

A. $216,309.

Q. What average fare would it take to bring that in, based upon the same passengers carried that were carried in the last fiscal year?

A. 8.2 cents per passenger.

Q. You stated in your examination in chief, in response to a question of Mr. Wheeler's that the Paducah Railway Company had gone into the hands of the receiver in 1918. It was not a corporation at that time, was it?

A. No, it was not, the Paducah Traction Company; but what I intend to convey was that the property of the Paducah Traction Company had gone into the hands of a receiver. It was then known as the Paducah Traction Company, Incorporated.

Q. What was the date on which the 7½ cents became effective in Paducah, with 6 cent tokens?

A. July 1, 1918.

Q. And it went into the hands of the receiver within six days thereafter?

A. Approximately.

Q. And continued to operate under that basis?

A. Yes, sir.

Q. With 7½ and 6 cent tokens?

A. Yes, sir.

Q. Until it was sold by order of court and bought by the present corporation?

A. Yes, sir.

Q. The present corporation became the owner the first of October, 1919, did it?

A. Yes, sir.

Q. And when did the present corporation raise its rates from 7½, 6 cent tokens, to 10 cents cash and 7½ cents tokens?

A. At the end of the first year of the life of its franchise, October 1, 1920.

Q. A new franchise was granted the Paducah Railway Company, was it in 1919?

A. Yes, sir.

Q. You had been in charge of the affairs of the predecessor company for three or four years, had you not?

A. Yes, sir.

169 Q. You understood and knew all about its incorporation and income and attitude?

A. Yes, sir.

Q. And accepted this contract of the city, which is called a franchise, with full knowledge of the previous operation of the railway system?

A. Yes, sir.

Q. The Paducah Railway Company is one of a twin organization in the city of Paducah, is it not, the other being known as the Paducah Electric Company?

A. The Paducah Railway Company is a separate corporation operating the street railway property serving Paducah and its environs. The Paducah Electric Company is a company operating a light and

power system in Paducah serving the city and its environs and selling current to the Paducah Railway Company.

Q. They are both owned by the same holding corporation, are they not,—holding company?

A. Yes, sir.

Q. What is the name of that company?

A. The Paducah Electric Company.

Q. Is that the holding company?

A. That is the holding company.

Q. Is the holding company and the company that furnishes light and power to the city of Paducah the same company?

A. Yes, sir.

Q. The Paducah Railway Company purchases its power from the holding company, then?

A. Yes, sir.

Q. And, in figuring the expenses of this corporation, you charge it with what it has to pay the holding company for power?

A. Yes, sir.

Q. Have you ever seen the amended petition that was filed in this case and the exhibit filed therewith?

A. Yes sir.

—. There is an Exhibit filed with that amendment showing earnings from operation in the twelve months ending September 30, 1920, and is referred to and made a part of the amended answer, to which you swore, in which it is stated that the number of passengers carried was 3,059,312. Will you please explain the discrepancy between that and the statement you have made in your deposition?

A. That figure that you have includes non-revenue passen-
170 gers and transfers. This figure I am giving you, or have given you, includes only revenue passengers.

Q. In that statement did you also say that the average fare was 5.16?

A. It would be that approximately, including the non-revenue passengers and the transfers.

Q. Under the statement filed with that amended petition you have an item of salaries and expenses of general officers. What does that mean? Who gets that money?

A. Salaries and expenses of general officers?

Q. Yes. I do not mean the names of the men. I just mean, what do you mean by general officers?

A. That includes the salaries and expenses of the manager, assistant treasurer, the president of the company, their assistants and clerks.

Q. What do you mean by the superintendent of transportation? Who is the superintendent of transportation?

A. The superintendent of transportation is J. W. McNeely. That also includes the salaries of two inspectors who check from time to time during the day the operation of the cars and the discipline on the same.

Q. Under the head of equipment, No. 32, you have as an expense which goes in to making up the $129,000, operating expenses, $9,822.16, for passenger and combination cars. What is that for?

A. That item covers the maintenance of the passenger cars of the company,—repairs and maintenance.

Q. It does not mean new cars?

A. No, sir.

Q. What does Item 58, shop machinery and tools, mean? You were not repairing tools, were you?

A. That includes the cost of operating the shop machinery and tools, maintenance of the same, that are used in the work of keeping the equipment in operating condition—making repairs, maintaining it.

Q. And it does not include any new tools?

A. It might include some new small tools, yes, replacing others that were worn out.

Q. What do you mean by No. 23, distribution system?

A. Cost of maintaining the overhead distribution system: feeders, trolley wire, making repairs.

Q. And the No. 56 $16,970; that is the amount of money
171 you paid the parent concern for current during that period of time. Is that right?

A. Yes, sir. That represents the actual cost of the current.

Q. You mean the actual cost to the Paducah Railway Company?

A. The actual generating cost to the Paducah Electric Company.

Mr. Wheeler: Go ahead and tell it in that connection. We get it for cost.

The Witness: We get it for cost.

Mr. Wheeler: State that we get it for cost.

Q. You mean that one corporation gives another corporation something for nothing?

A. No, they don't give it to us for nothing, but they sell it to them for actual cost, actual generating cost.

Mr. Tucker: Not at a profit?

The Witness: No profit.

Q. Now, referring to the testimony given by you toward the last of your examination in chief regarding the improvements made during the receivership, do you want the Court to understand that while the receiver had this company it was making money?

A. No, it was earning more money than it had previously earned for the reason that the fare had increased approximately two cents over the fare schedule that had applied during the major part of the history of the company. The company had defaulted on its bond interest and that was not being paid. That money was available for the purpose of putting the property into as good condition as possible, which was made necessary on account of the fact that during the previous twelve or fourteen years the company had not earned sufficient funds over and above its fixed charges to properly maintain the property. In point of fact, it had not always earned its fixed charges.

Q. Well, the money that you took away from the hands of the receiver and put into the rehabilitation of the property and the money which you have spent in the same way since that time,
172 since the new company took charge, has placed the Paducah Railway Company in good condition now, hasn't it?

A. Yes, I think the property is in what might be termed 85 per cent. condition.

Q. And all of that money was charged to expense, wasn't it?

A. It was charged to expense because at that time there was no other way to charge it.

Q. I didn't ask you why, but I just asked you if it wasn't done?

A. It was charged to expense.

Q. It was charged to expense?

A. Yes, sir.

Q. And both during the time the receiver had charge and also since the new concern became the owner it has been charged to expenses?

A. No, sir, it has not been. Since the new concern has taken charge of the property it has or will capitalize the cost of putting the property into first-class condition or as near first-class condition as we can put it.

Q. In other words, you are just capitalizing it as an item not yet taken care of?

A. Some of it has been capitalized and the remainder will be capitalized. It represents an addition to the cost of the property purchased.

Q. Well, the original cost is $825,000?

A. Yes; but the original cost of the property when purchased was not entirely or had not entirely been rehabilitated—was not in condition so as to give the best service possible to the city.

Q. I understand. You say there has been about $60,000 spent since that time by the new company?

A. Since the receivership.

Q. Well, I say since the new company took charge?

A. Yes.

Mr. Wheeler: No, he does not mean that.

The Witness: From the time the receiver took charge, sir.

Q. How much was there spent out of the money that the receiver received?

A. Approximately $30,000 on deferred maintenance.

Q. Where did this $60,000 come from?

A. It isn't sixty; it is thirty in addition to that.

Q. Oh, I thought you said sixty.

A. No, sir, sixty all told.

173 Q. What?

A. Sixty all told.

Q Well, if there was $30,000 expended while the receiver had charge and $30,000 since, where did you — the $42,000, then?

A. When I speak of deferred maintenance in connection with the rehabilitation of the property during the receivership I am not referring to the sum of $42,000 which we have as a matter of record as rehabilitation cost in the present, or, rather, in the accounts of the company as evidence by the books. I am speaking from recollection of the amount of money that we spent in ever- direction on the property where it was necessary to repair it and put it in good operating condition, not only the track, but it was necessary to spend money in the car barn, necessary to spend money on tools, necessary to spend

meney on working equipment. Under the order of the McCracken County Circuit Court we proceeded to put the property in as good condition as possible; and to the best of my recollection, while we have no—we did not keep an accurate record of all the money that was expended to cover deferred maintenance—it did amount to approximately $32,000. This $42,000 is rehabilitation of the track.

Q. It has no connection with the $30,000?

A. No, sir.

Q. Whenever it became necessary to buy new rails, or paint your cars, or fix anything that was necessary to be fixed to operate that railroad, what did you charge it to?

A. Under the receivership we charged it to expense. Under the operation or during the operation of the new company, the painting of cars, the maintenance of cars, was a matter of expense; but an item such a- new rail or the laying of a thousand ties, which it was necessary to lay due to the fact that the property was worn out and should be replaced, has of necessity to be capitalized and added to the original cost to the property.

Mr. Wheeler: How do you charge it?

The Witness: We charge it to what we term requisitions or authority for construction.

Q. There are some embraced in this expense account for the
174 year you furnished the city, are there not?

A. No, sir, that is not embraced in the expense account. That is part of the construction cost.

Q. That is some of the items you figured on in making up the amount of money that you had been out that year, wasn't it?

A. No.

Q. Let us see if it was not.

A. Mr. Berry, I think I can explain that to you very quickly.

Q. Here is roadway and track labor such an amount.

A. That is maintenance.

Q. Well, it is repairing the roadway, isn't it?

A. Yes.

Q. It is repairs and things to keep it in shape, isn't it?

A. Yes; but that is taking care of current maintenance. That is not rehabilitation of track. The rehabilitation of track in the $42,000 that we have been talking about is the rebuilding of the track. Now in addition to that there is current maintenance, keeping the track in shape.

Q. Here is the item of passenger and combination cars, which you testified to a while ago was fixing them up, painting them, and so on. What is that?

A. That is current maintenance; that is not original cost. The so-called "40" class cars during the receivership were the rebuilding of the old "80" class. That work involved the entire rebuilding of the bodies. But there is a monthly maintenance charge on those cars which keeps them going—repairs.

Q. That is all that you have got in this thing here?

A. Yes. Current maintenance cost, that is not rehabilitation at all.

Mr. Berry: I think of nothing more.

Redirect examination.

By Mr. Tucker:

Q. You were asked if you took a franchise as manager of the Paducah Railway Company, in which a six cent fare was fixed, knowing all of these conditions. In your opinion, would it have been possible for you to have gotten a higher fare at the time that
175 franchise was taken at six cents?

A. No, it would not.

Q. Did you try to get more?

A. Yes, sir.

Q. Did you tell the city officials of Paducah that you did not think six cents would carry the system?

A. I told the city officials of Paducah that a six cent fare would not make the requirements of the company. I also made a public statement to that effect. It was obvious from the previous years' experience that the seven cent fare was not large enough to permit the property to meet its operating expenses and its fixed charges; but the six cent fare was made the provision in the new franchise.

By Mr. Wheeler:

Q. For a year?

A. For a year and we agreed to try it for that period, with the understanding if it was not adequate, as we knew it would not be, that the fare question would come up for revision and an adequate fare would be provided.

By Mr. Tucker:

Q. Now, as I understood your testimony on cross-examination, you said that, assuming operating costs, taxes, four per cent depreciation annually, and an eight per cent fair return, it would be necessary to charge a fare of 8.85 cents in order to have the gross revenue meet the required revenue on that basis, and that on a six per cent basis, making just the change in the fair return, the fare would have to be 8.2 cents?

A. That is quite true.

Q. As a matter — fact, your fare in Paducah right now to anybody who wants to go and *by* tokens is how much?

A. 7½ cents.

Q. Below the amount that you say is required here?

A. Yes.

Q. As a matter of fact, is that fare, in your opinion, as high as it should be right now?

A. No, sir.

Q. In order to get the required revenue?

A. I don't think it is. I don't think the average fare is high enough.

Mr. Tucker: That is all.

176 Also the deposition of JOHN C. BLACK, taken at the same time and place and for the purposes in the caption mentioned. Said deponent, being first duly sworn by said Notary Public, deposes and says, in answer to questions by Mr. Tucker, as follows:

Q. What is your name?
A. John C. Black.
Q. What is your residence?
A. Chicago.
Q. What is your business?
A. Civil engineer.
Q. Where were you educated?
A. University of California in the College of Civil Engineering.
Q. Did you get a degree in civil engineering in that college?
A. I did.
Q. What has been your experience since that time? Briefly state it.
A. The greater part of my experience has been in connection with the valuation of public utilities and railroads in preparation of rate cases on the same. I had some outside experience in railroad construction and other work.
Q. Name some of the principal appraisals with which you have been concerned, please?
A. The first appraisal that I had to do with was that of all the roads of the state of Washington, conducted in the years 1906 and 1907. I had just a subordinate position in that period. But afterwards I assisted H. P. Gillette on the appraisal of the street railways of the city of Tacoma, Washington; and subsequent to that I acted as Mr Gillette's principal assistant in the appraisal of about ten public utility properties, most of them street railway and interurban railway properties in the states of Washington and Oregon. I have been principal assistant to Mr. Gillette since that time on valuation of the Southern Sirras Power Company, Nevada-California Power Company, Pacific Power Company—all in California; the Truckee General Electric Company, Reno Water Power & Light Company of Reno, Nevada; the Houston Electric Company, Houston, Texas; Galveston Electric Company, Galveston, Texas; Houston Gas & Fuel Company of Houston, Texas; and quite a number of other
177 smaller pieces of work.

Q. In connection with this work what has been your principal job?

A. I have had two principal duties: one, to prepare the appraisals of the property, or to have them prepared under my direction by competent engineers; the other has been to study the operating expenses and earnings of the companies, analyze them, see wherein, if anywhere, they were not correct expositions of the affairs of the companies ducing the periods they were supposed to cover.

Q. Then, your principal work has been in connection with the accounting end of the appraisal work, has it not?

A. Yes, sir, for the past eight years that has been the case. Prior to that I was primarily on the engineering end.

Q. Practically all your experience has been in connection with public utility work?

A. It has.

Q. And you are extremely familiar with public utility accounting and accounting systems?

A. I think that I may safely say that I am very familiar with them.

Q. Are you familiar with the Stone & Webster method of handling their accounts?

A. Yes, I am thoroughly familiar with that system.

Q. What do you think of the system generally?

A. It is complicated and a stranger attacking it for the first time is sure to find serious difficulties. After you have come to understand it, it is the best, clearest system that I know anywhere. It tells the story in the best shape, most intelligently.

Q. Your idea is that that system as it works out for the purposes of analysis and discovering the exact financial condition of a company is about the best system you have seen?

A. It is the best I have found, without question.

Q. Were you employed to make an investigation from an accounting end of the Paducah situation——

A. I was.

Q. —of the Paducah Railway Company?

A. Yes, sir.

Q. When were you so employed?

A. Some time the latter part of November of the present year.

Q. Did you go to Paducah for that purpose?

A. I did.

178 Q. When did you go to Paducah?

A. I arrived in Paducah on the morning of November 23d.

Q. How long were you there?

A. Twelve days.

Q. Were the books and accounts of the company turned over to you during that period?

A. They were.

Q. Did you make an examination of them?

A. I made a most thorough examination of them.

Q. Did you find the books during the Stone & Webster period, from 1906 to date, in fairly good shape?

A. Yes.

Q. And you were able to analyze them accurately and determine the condition of the company therefrom?

A. Yes, sir.

Q. Did you make a particular analysis of the books in connection with the financial operations of the company for the period from October 1, 1919, to October 1, 1920?

A. Yes, sir.

Q. Have you made up a picture of what you got from the books for that period?

A. Yes, sir.

Q. May I have that, please? (The witness passes a paper to counsel.) This is a financial statement of the Paducah Railway Company covering the six cent fare period October 1, 1919–October 1, 1920, is it?

A. Yes, sir.

Mr. Tucker: I want to introduce that.

(Paper containing financial statement respecting Paducah Railway Company, covering six cent fare period, October 1, 1919–October 1, 1920, is marked "C" and identified by the signature "Richard J. Martin Notary Public," and is attached hereto.)

Q. I notice in this statement that has been introduced in evidence that you speak of gross earnings, $159,461. Where did you get those gross earnings?

A. I got those from the financial reports for the period covered.

Q. That is, for the year October 1, 1919–October 1, 1920?

A. Yes, sir; twelve months.

Q. Financial reports of the company?

A. Of the Paducah Railway Company.

Q. I notice that you have operating expenses and taxes
179 for that period, $129,590. Where did you get that figure?

A. That came from the same source.

Q. Now, it has been testified that four per cent of the property value is a fair amount for a depreciation annuity, and I understand that you have used in making up these figures that as a basis?

A. I have.

—. Upon my telling you that that has been the testimony in the case?

A. Yes, sir.

Q. Now, will you go on with that as a basis and explain what you have done in this financial set-up, the different bases on which you take it, and the results you arrive at?

A. There were, among the records of the Paducah Railway Company, numerous old journals and ledgers of predecessor companies prior to the year 1905, but they were not in such shape that it was possible to get at the actual cost of the properties that are now owned by the Paducah Railway. Therefore, I have taken here three sets of figures furnished by Mr. Hahn, engineer on the appraisal of the properties for Stone & Webster.

Q. You have not made any investigation to see whether those are correct or not, but you have accepted them for the purpose of your calculations as true?

A. I examined them and, without exhaustive study, they appeared reasonable on their face. I know that they are within a reasonable amount; they might not agree in detail.

Q. You are simply accepting them for present purposes?

A. Yes, sir, I am accepting them. I examined them because I did not want to accept them blindly. The first calculation which

I have here is based upon the appraisal of $715,520 for the properties as they now stand, but at prices prevalent in the year 1914. Four per cent. Depreciation on that is $28,621, and that added to operating expenses and taxes, $129,590, gives a total of $158,211 as a total cost to the company of doing business in the twelve months from October 1, 1919, to October 1, 1920. The depreciation although it occurs, has not been paid. Deducting this total
180 cost of $158,211 from the gross earnings of $159,461, leaves $1,250 as the balance available for return on investment, or, as I should term it, the true net earnings. That balance is .17 per cent on $715,520.

The second calculation on this sheet is made in the same manner as the first but upon a total property cost of $855,000, which is the sum that the property cost its present owner. The four per cent depreciation on that sum is $34,200, which, added to the operating expenses for the twelve months, makes a total cost of business for the year of $163,790. This is in excess of the gross earnings for the twelve months, by $4,329, which, expressed otherwise means that the company suffered a loss.

Q. Depreciation is part of the operating cost, isn't it?

A. It is part of the cost. I prefer not to call it expense until it has been paid for. It is not yet paid for.

Q. It is undoubtedly a part of the cost?

A. It is a part of the cost. The third calculation is similar in character to the other two but is based upon a cost of reproduction of the properties at prices in effect on June 30, 1920. The total cost of reproduction is $1,439,082. Four per cent on that is $57,563, which added to the operating expenses and taxes, gives a total cost of business for twelve months of $187,153. This is $27,692 in excess of the gross earnings of the year. That is the amount by which the company failed to pay its operating expenses and its depreciation, or, in other words, its total cost of doing business.

Q. So that, Mr. Black, if the value of the property were taken to be $715,000, based on 1914 prices, the company would have earned less than one per cent as a return on that value?

A. Yes, sir.

Q. While, if the value of the property were determined to be $855,000, the company would not have earned anything as a return on that property value?

A. It would have suffered a loss.

Q. It would have suffered a loss; and it would have suf-
181 fered a correspondingly larger loss if the 1920 prices were to be taken at the basis of value?

A. Yes, sir.

Q. Now, have you made up some calculations with respect to required fares?

A. I have.

Q. What did you use for the period; just the same period?

A. Yes, sir.

Q. And did you use these same bases of valuation?

A. Yes, the same three bases.

Q. And did you figure them out on one basis of six per cent return and another one of eight per cent return?

A. Yes. sir.

Q. You haven't those typed, as I understand you?

A. No.

Q. Will you just turn to those and testify to what you did and what the results of your investigation are with respect to the required fare? In the first place, let me ask you, what is the basis respecting the number of passengers carried? Have you a figure there for the number of passengers carried during the period?

A. Yes, sir. There were 2,636,337 pay passengers carried during that period.

Q. You mean by pay passengers, people that get on the car and either pay full fare or half fare?

A. Yes, sir.

Q. And you include in that figure any passengers not paying?

A. No, the employees——

Q. Or policemen or anybody else?

A. Or anybody that rode free.

Q. Where did you get that figure from?

A. From the operating reports of the company for that period.

Q. Now, if you will go ahead and tell the results of your investigation?

A. Do you wish the complete statement of calculation or merely the result of it?

Q. Just give the result. If Mr. Berry wants the complete calculation- he can get them. Just state what the results are.

A. Very well. To pay six per cent net upon the property——

Q. You mean by net after paying four per cent depreciation?

A. Yes, after paying all operating expenses and four per cent depreciation.

Q. And you are including all operating expenses and taxes?

A. Yes, sir.

182 Q. All right.

A. To pay six per cent. net upon $715,520 would require an adult fare of approximately 7.56 cents. To pay an eight per cent. return upon a property cost of $715,520 would require an adult fare of 8.12) cents. To pay a six per cent. return upon a property cost of reproduction at prices as of 1920, amounting to $1,439,082 would require an adult fare of approximately 10.28 cents; to pay eight per cent. upon a cost of reproduction of $1,439,082 would require an adult fare of 11.37 cents. To pay six per cent. upon the total cost of the property to date to the present owners, amounting to $855,000, approximately, would require an adult fare of approximately 8.11 cents; to pay eight per cent. upon a cost of $855,000 would require approximately 8.75 cents for an adult fare. All that I have just said respecting the fares that would be required to pay these various percentages upon the three bases assigned is based upon the assumption that the number of passengers would be the same under the required fares as they were under the six cent fare which was actually in effect.

Q. Your experience, based on investigations which you have made, is that when the fare is increased there is a falling off?

A. Yes, sir.

Q. Has your experience been, however, that the falling off is temporary and not permanent?

A. It is temporary in most cases.

Q. How many other street railway companies have you personally been concerned in appraising?

A. I think I will have to count them up. Do you want a list of them by name?

Q. No, just approximately, whether five or six or ten?

A. It is more. The appraisal of the Paducah properties is the eleventh street railway appraisal that I have been connected with.

Q. In connection with those appraisals have you had occasion to investigate the question of going concern value and development cost?

A. Yes, sir.

Q. Has it been your experience that this element of value in street railways has been higher than in other utilities?

183 A. Very much higher. I might say in that connection that I have had an opportunity to study it under other utilities, too. I am not depending upon hearsay respecting that. I know both sides.

Q. In all of your street railway companies that you have ever had experience with have you found one case where the going concern value or development cost was not more than enough to offset the accrued depreciation? A. No, sir, never found such a case.

Q. In your opinion, it is the going concern value and development cost of the Paducah Railway Company sufficient to as least offset accrued depreciation?

A. It will be much more than enough to offset it.

Mr. Tucker: Your witness.

Cross-examination.

(By Mr. Berry):

Q. Did you go to Paducah, Mr. Black, with Mr. Hahn?

A. No, sir.

Q. Were you there when he was there?

A. No, sir, he was gone before I got there.

Q. Your investigation was independent of his, then?

A. Entirely.

Q. And not from any record he made?

A. My investigation at Paducah was not from any records he made. I have since been furnished with the results of his appraisal and have made use of it as stated here.

Q. If I understand you, the investigation you made was of books of the company?

A. Yes, sir, that is it.

Q. Not of the physical properties of the company?
A. No, sir.
Q. You have simply drawn the conclusions to which you have testified here from figures obtained from the books of the company at Paducah?
A. Yes, sir.
Q. And the report of Mr. Hahn?
A. Yes, sir.
Q. Now, in arriving at a basis of what the fare should be to bring in *so* money to pay six and eight per cent. upon the respective
184 sums you have mentioned in your testimony, you have taken into consideration the depreciation in each of those sums as part of the operating expenses, have you not?
A. I have taken into consideration four per cent. of the bases assumed and added it.
Q. That is four per cent. of $715,000 and four per cent. of $855,000?
A. Yes, sir.
Q. You stated a while ago that you did not like to call this expense until it was paid for?
A. Yes, sir.
Q. Has not all this depreciation expense been paid in this company each year?
A. No, sir.
Q. What?
A. No, sir.
Q. If the properties of the Paducah Railway Company and its predecessor, the Paducah Traction Company, have been kept up to a point of efficiency which would be termed excellent condition, would not the depreciation have been taken care of in the expense?
A. No, sir.
Q. Why?
A. Because depreciation goes on slowly throughout the life of the property and is not paid for until it is complete, or, as we term it, matured. A car is depreciating from the time it goes into service until it passes out of service, but there is no charge for depreciation made until that car is gone and a new one is to be purchased and put in its place.
Q. Then, the expense of rehabilitation or taking care of the property is an extra expense from depreciation?
A. Yes, sir. Maintenance is——
Q. And has nothing to do with depreciation?
A. They are very closely allied. Current repairs and the replacements of property touch very closely on one another; but, of course you cannot pay for depreciation in advance; you must provide for it in advance, but you cannot pay for it in advance.
Q. In figuring depreciation you figure the depreciation of cross ties, don't you?
A. Yes, sir.
Q. And the depreciation of rails on the track?
A. Yes, sir.

Q. Which, ultimately, in time, wear out?

A. Yes, sir.

Q. If those rails and cross ties are replaced by new ones,
185 then to that extent the depreciation has been eliminated; isn't that true?

A. That would then be a charge to depreciation, if they were replaced in any large amount. I might explain that when a few cross ties, for instance, are replaced, one here and there, just keeping it up, that item is generally charged to maintenance expense and included with expense of the company; but if you were replacing any considerable portion of track, that would be charged as depreciation and would not appear in the maintenance expense in the operating reports, or in the financial reports, rather, of the company.

Q. Well, if the cross ties and rails and any other thing necessary for the maintenance of the property were replaced, however, by new, and charged to expense, it would not be right to charge it to depreciation?

A. No, sir, but it would not be charged to expense.

Q. If it had been?

A. If it had been, it wouldn't be right to charge it to depreciation.

Q. If in the keeping of the books of this company, and if in the statements testified to the Court there are items of expense for these very things, then to that extent the depreciation had been decreased, hadn't it?

A. Yes, as respects cross ties that would apply. As respects rails it presumable would not apply at all, and as respects cross ties it would apply in only a very small degree.

Q. Well, suppose a mile of the railroad track wore out and they put in new and they charged it to expense; it would not be right to charge it to depreciation, would it? A. No, it would not be charged to expense.

Q. I am not talking about what it would be but what it was, or is, or will be. Hypothetically, I am hitting it now.

A. I see.

Q. If the property has been kept up and maintained in a good condition up to now all the time and is now in good condition, where do you figure your depreciation from?

A. The rails which you have spoken of are wearing out steadily,
but it is not yet time to replace those that are in use there.
186 They will have to be worn still more before it is time to replace them. In the meantime, that depreciation is growing but is not yet paid for and must be provided for out of present earnings, because when the change is made the company will find itself with tremendously heavy expense on its hands and no funds to meet it.

Q. I understand that. But it is just a matter of figuring, after all?

A. No, sir, it is a matter of physical facts in the case.

Q. If a lot of rails wear out and are replaced and the cost is charged to expense, that eliminates depreciation, doesn't it?

A. If they were charged to expense it would eliminate depreciation as an additional charge, but I don't know of any case where that has been done.

Q. You don't mean to say that the four per cent. depreciation in 1906 is still chargeable against this company, do you, as depreciation?

A. Some of that 1906 money has been paid, charged off, and that has appeared in the records of the company.

Q. Well, now, what per cent, of 1906?

A. I can't answer you that question.

Q. Well, from your experience as a man in that line of business would you say what part of that four per cent. has been paid off and charged off in 1906, '07, '08, '09, '10 and so on down to the present time?

A. I should say that if the normal order of things has occurred in Paducah, as I presume it has, probably about three quarters of the depreciation which occurred in the year 1906 has now been paid off.

Q. Well, doesn't that obtain for all the years between 1906 and now?

A. Not three quarters. As you come down there will be less and less of it that will have been paid off.

Q. Less and less of it will have been paid off?

A. Yes, sir. For instance, if you take the year 1910, there would roughly, under ordinary circumstances, have been about half of the depreciation which occurred in that year paid off prior to the present time.

187 Q. Mr. Black, if a property of this character is kept up in first-class condition all the time from the expense account, how can there be any depreciation except possibly for the current year?

A. That is all that the four per cent. is attempting to cover, is the depreciation of the current year.

Mr. Berry: That is all.

188 STATE OF MASSACHUSETTS,
County of Suffolk:

I, Richard J. Martin, a Notary Public in and for the county and state aforesaid, certify that the foregoing depositions of Messrs. C. H. Hahn, L. R. Nash, A. S. Nichols, and John C. Black were taken before me at the time and place stated in the caption; that said witnesses were duly sworn before deposing; that, by agreement of counsel made in my presence, the testimony was taken stenogr-phically and will have the same force and effect as though written in longhand and the questions and answers read to and subscribed by the witnesses in my presence; that signature of the witnesses to the depositions was by further agreement waived and also all questions of formality, except where objections were made as to relevancy and competency.

I further certify that I have truly and accurately transcribed the questions and answers; that the complainant was present by its counsel, Messrs. Tyler, Tucker, Eames & Wright, and Hon. Charles

K. Wheeler, and the defendants present by their counsel, Hon. W A. Berry.

Given under my hand and seal of office this fourteenth day o December, 1920.

RICHARD J. MARTIN.

My commission expires February 13, 1925.

I hereby acknowledge receipt from Messrs. Tyler, Tucker, Eame & Wright, Boston, Mass., of the sum of $104.90 in payment of m notarial and transcribing charges.

RICHARD J. MARTIN.

189 The following is the Appraisal of property of the Paducah Railway Company, Inc., Paducah, Kentucky, at 1920 prices Stone & Webster, Inc. Boston, Mass. Filed Dec. 20, 1920.

"A."

Richard J. Martin, Notary *Re*public.

Stone & Webster,

Division of Construction and Engineering.

Memorandum.

J. O. No. 3414.

To Management Division: Boston, December 8, 1920.

Attention Mr. H. T. Edgar.

In accordance with your request, we have made an appraisal o the cost to reproduce, new, the property of the Paducah Railway Company, Incorporated, based on prices as of June 30, 1920. The total figure is as follows:

Cost to reproduce, new, at 1920 prices $1,439,082

As further requested we have also computed the "accured depreciation" of the property by estimating the amounts necessary to restore each part of the property to first class operating condition, the resultant figure being $178,462.

The value of the property thus determined as $1,260,620 and so stated in our appraisal does not, in our opinion, necessarily represent the true value of the property for rate making purposes, which we believe to be equivalent to the cost to reproduce, new.

For further information and details, kindly see the pages following.

Yours very truly,

DIVISION OF CONSTRUCTION AND ENGINEERING,

By P. JUNKENSFIELD,

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Special Work	17	39
Track and Roadway Labor	18	39
Paving	19	..
Roadway Machinery, and Tools	19	..
Bridges, Trestles, and Culverts	19	..
Crossings, Fences, and signs	21	..
Poles and Fixtures	21	39
Distribution System	22	40
Shops and Car Houses	24	..
Stations, Misc. Buildings, and Structures	..	41
Service Equipment	..	33
Passenger and Combination Cars	27	42
Electric Equipment Cars	34	43
Shop Equipment	36	..
Furniture	37	..
Miscellaneous Equipment	37	..

191 Description of Property.

This appraisal covers all property of every kind including land, owned by the Paducah Railway Company, Inc., and located in the City of Paducah, Kentucky, and its immediate vicinity.

The property consists of the following principal items:

3 Parcels of land, including rights of way.

18.25 miles of equivalent single track, surface type construction located as follows:

Inside city limits—16.05 miles.

Outside " " — 2.20 "

6 Miscellaneous buildings, including car barn, shops, office building, storage sheds and waiting stations.

8 Bridges and culverts.

32 Passenger and miscellaneous service cars.

Complete distribution system, consisting of approximately 18.25 miles of single overhead trolley and 6 miles of feeder cable.

Shop equipment and tools, furniture and fixtures.

Inventory.

The inventory made for the purpose of this appraisal is based on the status existing on September 1, 1920 and includes all property owned by the Paducah Railway Company, Inc. A complete and independent field survey was made of the entire property in order to ascertain quantities and character of individual items. The length of the entire track was measured by the Railway Company's forces and checked by our engineers. The quantities thus determined were further checked by scaling from the latest city maps and found to be in substantial agreement.

The several types of track and track construction as well as quantities and kinds of all other component parts of the system were determined by our engineers by field inspection and count.

Arrangement of Appraisal.

The property as determined by this inventory is arranged according to the standard classification of accounts as prescribed by the Interstate Commerce Commission and has been priced on the basis of

Cost to Reproduce, New, at prices as of June 30, 1920.

Cost to Reproduce New, at prices as of June 30, 1920 less depreciation.

The Cost to Reproduce, New represents the estimated cost of reproducing the property as a new concern using the prices effective at the same time above stated but assumming the same con-
192 ditions as existed when the property was first constructed.

The Cost to Reproduce, New less depreciation, represents the cost new, with deductions for the amounts necessary to rehabilitate the property or bring it to a point of first class operating condition.

(*a*) Ownership:

The ownership of individual items was determined from the Company's records.

(*b*) Summaries:

The following summaries have been prepared:

1. Cost to Reproduce, New and less depric-ation, the entire property inside and outside the city limits of Paducah.

2. Cost to Reproduce, New and less depreciation, the property located inside the city limits of Paducah.

3. Cost to Reproduce new and less depric-ation the property located outside the city limits of Paducah.

(*c*) Unit costs:

Prices for material and equipment used in this appraisal were obtained from local dealers and manufacturers in Kentucky and vicinity whereever possible. In other instances quotations were secured from standard manufacturers and dealers.

The car barn land was appraised in January, 1919 by Messrs. Lackey and Phillips of Paducah. The right of way was computed by our engineers on the basis of prices for similar property in the section.

Labor rates, freight rates, cost of haulage, etc., are those which were in force in the Paducah District on the date stated above.

Miscellaneous structural costs as field engineering and superintendence, office at works, temporary construction, insurance during construction and depreciation of construction equipment have been included in the unit costs, as precentages of labor and material.

An allowance of 5% was made for omissions and contingencies on all track accounts and 10% in the Case of trolley and feeder materials. No such allowance was made on rolling stock and equipment.

(*d*) Contractors' services:

Allowance of 10% was made in the unit costs for contractors' Services on all items of material and labor, except as noted below, on the assumption that the entire property would be constructed by contractors under the supervision of the company's own organization.

193 No allowance was made for Constructors' Services on land, right of way, rolling stock, shop equipment, furniture, miscellaneous equipment and materials and supplies, items which would ordinarily be purchased by the company district.

The net amount, therefore, included for Contractors' Services is approximately 7.8% of the total of material and labor.

General Construction Costs.

In order to properly determine the amounts of general construction costs, a construction period of one year was assumed. As this expense cannot be distributed accurately among the various items of material and equipment it has been included separately under the following headings:

Engineering Cost.
Law Expenditure during construction.
Interest during construction.
Injuries and Damages.
Taxes during construction.
Administrative Organization Expenses during construction.

(*a*) Engineering cost:

Engineering cost consists of the salaries and expenses of the chief engineer and his staff of assistants engaged in making working plans, estimates, specifications, contracts, purchases and shop inspection of equipment and materials and executing detailed technical supervision of the work.

(*b*) Law expenditures during construction:

Law expenditures consist of the salaries and expenses of counsel, solicitors, and attorneys engaged on legal matters incurred on account of contruction.

(*c*) Interest during construction:

Interest during construction consists of interest paid on moneys acquired for use in connection with expenditures incidental to the construction and equipment of the road and was computed at 8% on one-half of the cost of the entire property for a period of one year.

(*d*) Injuries and damages:

Injuries and Damages comprise the amounts paid in settlement of injuries to persons and for damages inflicted upon adjacent property during and incidental to construction work, also all legal and other expenses incurred in connection with such payments.

194 (*e*) Taxes during construstion:

Taxes during construction consist of taxes and assessments levied on the property during the construction period. The amount included is based on the normal tax rate obtaining in Paducah, and figured for one-half the construction period at that rate.

(*f*) Administrative organization expenses during construction:

The amount included in this item is made up of salaries and expenses of the general body directing the work, cost of stationery and supplies and other office charges.

Organization Prior to Construction.

It was assumed that one year would elapse from the inception of the project until construction operations were commenced. The expense shown for this period comprises the cost of a preliminary investigation, publicity work, the selling of securities and the cost of work performed by the permanent administrative, legal and technical organizations prior to the commencement of actual construction work. These activities are more fully described in the following.

(*a*) Preliminary investigation:

This work comprises a study of the general situation relative to the construction and successful operation of the system contemplated, involving consultation with legal authorities, and engineers, plans for financing, publicity work, and the like.

(*b*) Financial expenses:

The financial expenses consist of the cost of soliciting subscriptions for securities, the preparation and issuance of security certificates and the actual cost of selling securities.

(*c*) Permanent organization:

The work of the permanent organization involves detailed studies of population, its growth, density and direction of movement, studies of probable traffic, based on conditions in other cities; selection of routes, sites for car barns and other buildings, etc.; the preparation preliminary plans, cost estimates of various schemes, calculations of probable earnings and operating expenses; hearing before public authorities, study of transportation laws, and other similar matters.

195 Working Capital.

The working capital consists of cash balances and materials and supplies on hand. The amounts included in the appraisal represents the average of cash and materials and supplies on hand for the four years from 1916 to 1919 inclusive. This total was apportioned to the property located within and without the city limits, re-pectively, and on the basis of total costs of material and labor represented by each.

Items Omitted.

The appraisal does not include the following items:

(*a*) Going concern value and development cost.

(*b*) Special value of land for railway purposes.

(*c*) Profits of promotion.

(*d*) Discounts on securities.

(*e*) Net investment in superseded property.

(*f*) Franchise costs.

Records.

The complete record, covering the field inventory, computations, appraisal details, unit costs of material and labor and all other supporting data are filled into separate volumes.

Estimated Cost of Reproduction of Property New and Less Depreciation, Based on Inventory as of Sept. 1, 1920.

Prices as of June 30, 1920.

General Summary.

Item.	Cost to reproduce new. June 30, 1920.	Cost to reproduce new. Less depreciation.
Property Inside City Limits	$1,293,820	$1,131,695
Property Outside City Limits	145,262	128,925
Grand Total, all Property	$1,439,082	$1,260,620

Estimated Cost of Reproduction of Property New and Less Depreciation, Based on Inventory as of Sept. 1, 1920, and Prices as of June 30, 1920.

Total Property Used in Railway Operation.

Account.	Item.	Cost to reproduce new. June 30, 1920.	Cost to reproduce new. Less depreciation.
	I. Land:		
502	Right of Way	$5,800	$5,800
503	Other Land used in Electric Ry. Operation	6,000	6,000
	Total I	$11,800	$11,800
	II. Construction & Equipment:		
504	Grading	$126,343	$126,343
505	Ballast	123,667	112,199
506	Ties	46,214	38,364
507	Rails, Rail Fastenings and Joints	186,771	143,329
508	Special Work	58,492	42,165
510	Track and Roadway Labor	92,857	80,785
511	Paving	70,144	57,518
512	Roadway Machinery and Tools	1,433	1,075
515	Bridges, Trestles, and Culverts	23,008	20,707
516	Crossings, Fences, and Signs	200	180
519	Poles and Fixtures	30,032	25,326
521	Distribution System	67,155	57,712

523	Shops and Car Houses	56,140	53,061
524	Stations, Misc. Buildings and Structures	719	381
530	Passenger and Combination Cars	161,806	139,396
532	Service Equipment	8,400	7,140
533	Electric Equipment of Cars	72,764	56,512
536	Shop Equipment	11,356	8,517
537	Furniture	2,940	2,352
538	Miscellaneous Equipment	760	570
	Total	$1,141,201	$973,632

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501	Engineering Cost	34,236	29,208
546	Law Expenditure	11,412	9,736
547	Interest During Construction	74,338	74,338
548	Injuries and Damages	11,412	9,736
549	Taxes During Construction	6,552	6,552
550	Administrative Organization Expenses During Construction	17,118	14,605
	Total II	$1,296,269	$1,117,807
	III. Organization Prior to Construction:		
550 (*a*)	Preliminary Investigation	$7,500	$7,500
550 (*b*)	Cost of Selling Securities	72,000	72,000
550 (*c*)	Technical and Legal Expense	15,692	15,692
550 (*d*)	Interest on (*a*), (*b*), and (*c*)	15,321	15,321
	Total III	$110,513	$110,513

Estimated Cost of Reproduction of Property New.—Continued.

Account.	Item.	Cost to reproduce new. June 30, 1920.	Cost to reproduce new. Less depreciation.
	IV. Working Capital:		
	Materials and Supplies	$10,500	$10,500
	Minimum Cash Balance	10,000	10,000
	Total IV	$20,500	$20,500
	Total Property	$1,439,082	$1,260,620

199 Paducah Railway Company, Inc.

Estimated Cost of Reproduction of Property New and Less Depreciation, Based on Inventory as of Sept. 1, 1920, *and Prices as of June* 30, 1920.

Property Used in Railway Operation Inside City Limits.

Account.	Item.	Cost to reproduce new. June 30, 1920.	Cost to reproduce new. Less depreciation.
	I. Land:		
502	Right of Way	$4,000	$4,000
503	Other Land used in Electric Ry. Operation	6,000	6,000
	Total I	$10,000	$10,000

II. Construction and Equipment:

504	Grading	$95,001	$95,001
505	Ballast	114,680	103,212
506	Ties	40,463	34,798
507	Rails, Rail Fastenings, and Joints	162.568	125,177
508	Special Work	55,935	40,273
510	Track and Roadway Labor	85,844	74,684
511	Paving	70,144	57,518
512	Roadway Machinery and Tools	1.433	1,075
515	Bridges, Trestles, Culverts	23,008	20,707
516	Crossings, Fences, and Signs	200	180
519	Poles and Fixtures	24,157	20,368
521	Distribution System	56,626	48.732
523	Shops and Car Houses	56,140	53,061
530	Passenger and Combination Cars	150,542	129,711
532	Service Equipment	8,400	7,140
533	Electric Equipment of Cars	66,418	51,308
536	Shop Equipment	11,356	8,517
537	Furniture	2,940	2,352
538	Miscellaneous Equipment	760	570
200	Total	$1,026,615	$874.384
501	Engineering Cost	30,798	26,231
546	Law Expenditure	10,266	8,744
547	Interest during Construction	66,800	66.800
548	Injuries and Damages	10,266	8,744
549	Taxes During Construction	5,887	5,887
550	Administrative Organization Expenses During Construction	15,399	13,116
	Total II	$1,166.031	$1,003,906

Estimated Cost of Reproduction of Property New.—Continued.

Account.	Item.	Cost to reproduce new. June 30, 1920.	Cost to reproduce new. Less depreciation.
	III. Organization Prior to Construction:		
550 (*a*)	Preliminary Investigation	$6,750	$6,750
550 (*b*)	Cost of selling Securities	64,700	64,700
550 (*c*)	Technical and Legal Expenses	14,116	14,116
550 (*d*)	Interest on (*a*), (*b*) and (*c*)	13,773	13,773
	Total III	$99,339	$99,339
	IV. Working Capital:		
	Material and Supplies	$9,450	$9,450
	Minimum Cash Balance	9,000	9,000
	Total IV	$18,450	$18,450
	Total Property Inside City Limits	$1,293,820	$1,131,695

Estimated Cost of Reproduction of Property New and Less Depreciation, Based on Inventory as of Sept. 1, 1920, and Prices as of June 30, 1920.

Property Used in Railway Outside City Limits.

Account.	Item.	Cost to reproduce new. June 30, 1920.	Cost to reproduce new. Less depreciation.
	I. Land:		
502	Right of Way	$1,800	$1,800
	Total I	$1,800	$1,800
	II. Construction and Equipment:		
504	Grading	$31,342	$31,342
505	Ballast	8,987	8,987
506	Ties	5,751	3,566
507	Rails, Rail Fastenings and Joints	24,203	18,152
508	Special Work	2,557	1,892
510	Track and Roadway Labor	7,013	6,101
519	Poles and Fixtures	5,875	4,958
521	Distribution System	10,529	8,980
524	Stations Misc. Buildings and Structures	719	381
530	Passenger and Combination Cars	11,264	9,685
533	Electric Equipment of Cars	6,346	5,204
	Total	$130,238	$113,901

202 *Estimated Cost of Reproduction of Property New.*—Continued.

Account.	Item.	Cost to reproduce new. June 30, 1920.	Cost to reproduce new. Less depreciation.
501	Engineering Cost	$3,438	$2,977
546	Law Expenditure	1,146	992
547	Interest During Construction	7,538	7,538
548	Injuries and Damages	1,146	992
549	Taxes During Construction	665	665
550	Administrative Organization Expenses During Construction	1,719	1,489
	Total II	$130,238	$113,901
	III. Organization Prior to Construction:		
550 (*a*)	Preliminary Investigation	$750	$750
550 (*b*)	Cost of Selling Securities	7,300	7,300
550 (*c*)	Technical and Legal Expense	1,576	1,576
550 (*d*)	Interest on (*a*), (*b*) and (*c*)	1,548	1,548
	Total III	$11,174	$11,174
	IV. Working Capital:		
	Materials and Supplies	$1,050	$1,050
	Minimum Cash Balance	1,000	1,000
	Total IV	$2,050	$2,050
	Total Property Outsiede City Limits:	$145,262	$128,925

204 Details of Appraisal, Property Inside Paducah City Limits.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Right of way:					
	Private right of way on Jefferson St. running from 19th St. to City Limits	.....	.....	.....	$4,000	
	Total acct. 502				$4,000	$4,000
503.	Other land used in electric railway operation:					
	Car barn lot at 14th St. and Broadway	.....	.....	.....	$6,000	
	Total acct. 503				$6,000	
504.	Grading:					
	Excavation and disposal of loose material	28,359	c. y.	$3.15	$89,331	
	Curbing concrete	.....	l. s.	.....	5,670	
	Total, acct. 504				$95,001	$95,001

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
505.	Ballast:					
	Concrete-1, 3-6 mix, 6″ below bottom of tie to 3″ above top of tie.....	7,317	c. y.	10.46	$76,536	
	Gravel—6″ below bottom of tie to top of rail.....	20,182	c. y.	1.89	$38,144	
	Total, acct. 505.....				$114,680	$103,212
506.	Ties:					
	6″ x 8″ x 8′ 0″ white oak cross ties (seconds)	37,345	ea.	1.07	39,959	
	6″ x 8″ x 10′ 0″ white oak bridge ties	200	ea.	2.52	504	
	Total, acct. 506.....				$40,463	$34,798
507.	Rails, rail fastenings, and joints:					
	60 lb. low tee rail.....	960.50	G. T.	89.46	85,926	
	79 lb. high tee rail.....	531.52	G. T.	89.46	47,555	
	Angle bar joints for 60 lb. rail.....	4,320	ea.	2.84	12,269	
	Angle bar joints for 79 lb. rail.....	1,235	ea.	3.78	4,668	
	Ties plates	25,720	ea.	0.38	9,774	
	Spikes	315	keg	7.56	2,281	
	Total, acct. 507.....				$162,568	$125,177

508.	Special work:					
	Hard center switches 60 lb. rail....	19	ea.	277.20	5,267	
	Hard center mates—60 lb. rail.....	19	ea.	239.40	4,549	
	Hard center frogs—60 lb. rail.....	20	ea.	126.00	2,520	
	Rail 60 lb. tee.....	90.16	G. T.	89.46	8,066	
	Hard center switches—79 lb. rail...	25	ea.	365.40	9,135	
	Hard center mates—79 lb. rail.....	25	ea.	264.60	6,615	
206						
	Hard center frogs—79 lb. rail.....	37	ea.	189.00	6,993	
	Hard center crossings—79 lb. rail..	1	ea.	.....	958	
	Built-up crossings—79 lb. rail.....	18	ea.	529.20	9,526	
	Rail—79 lb. tee.....	18.34	G. T.	89.46	1,641	
	Chocks and bolts for curves.....	8,750	lb.	0.076	665	
	Total, acct. 508.....				$55,935	$40,273
510.	Track and roadway labor:					
	Labor distributing and spacing ties, laying steel, and mixing and placing ballast:					
	Paved track	23,810	l. f.	1.76	41,906	
	Labor distributing and spacing ties, laying steel and surfacing:					
	Unpaved track	59,155	l. f.	0.47	27,803	
	Extra labor laying curves:					
	Paved track	2,434	l. f.	1.89	4,600	
	Unpaved track	4,590	l. f.	0.47	2,157	

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Labor laying special work:					
	Switches, mates and frogs—					
	Paved track	87	pcs.	67.03	5,832	
	Unpaved track	58	pcs.	35.28	2,046	
	Hard center crossing	1	pcs.	.....	139	
	Built-up crossings	18	pcs.	75.60	1,361	
207	Total, acct. 510				$85,844	$74,684
511.	Paving:					
	Vitrified brick on ½" sand cushion	15,116	s. y.	$3.78	$57,138	
	Wood block on ½" sand cushion	1,067	s. y.	5.04	5,378	
	Bitulithic—2"on concrete	4,036	s. y.	1.89	7,628	
	Total Acct. 511				$70,144	$57,518
512.	Roadway Machinery and Tools:					
	Acetylene welding outfit	1	ea.	.....	$262	
	Electric welding outfit	1	ea.	.....	785	
	Miscellaneous tools consisting of picks, shovels, drills, rail benders, bars, etc	.....	l. s.	.....	386	
	Total, Acct. 512				$1,433	$1,075

515. Bridges, Trestles and Culverts:

Bridge on Tyler Line 1—100′ span single track steel deck truss and 6—30′ reinforced concrete deck girder spans on reinforced concrete colum-s with concrete pile footings under two bents.

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Piles 12″ concrete	200	l. f.	4.40	$880
Excavation	28	c. y.	2.90	81
Back fill	89	c. y.	0.44	39
Reinforced Concrete				
Forms	5,473	s. f.	0.63	3,448
Reinforcement	7.85	tons	138.60	1,088
Concrete—1-2-3 mix	148	c. y.	18.60	2,753
Surface concrete	5,473	s. f.	0.126	690
Structural steel	12.80	tons	227.00	2,906
40 lb. guard rail	3.30	G. T.	63.00	208
Lumber	0.56	MBM	95.00	53
Anchor bolts	891	lb.	0.076	68
Single track temporary trestle—3—post bents on mud sills.				
Excavation	20	c. y.	2.90	58
Timber	34.3	MBM	107.00	3,670
Bolts	1,427	lb.	0.076	108
Removal of temporary trestle	.....	l. s.	.....	630
Total Bridges				$16,680

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Brick culverts containing 31.6 c. y. excavation 4.2 M common brick 100 s. f. centering .341 MBM tim-er					
	Brick culvert at 6th and Backman Sts.	1	ea.	.....	547	
	Brick culvert at 6th and Norton....	1	ea.	.....	547	
	Brick culvert at 19th and Ky. Ave.	1	ea.	.....	547	
209						
	Concrete culverts:					
	18th and Broadway.....	37	c. y.	$25.20	$932	
	18th & Jefferson.....	37	c. y.	25.20	932	
	12th and Caldwell.....	48	c. y.	25.20	1,210	
	13th and Caldwell.....	64	c. y.	25.20	1,613	
	Total, Culverts.....				$6,328	
	Total, Acct. 515.....				$23,008	$20,707
516.	Crossings, Fences and Signs:					
	Miscellaneous signs.....	.....	l. s.	.....	200	
	Total, Acct. 516.....				$200	180

519. *Poles and Fixtures:*					
16.0 miles of single circuit pole line, comprising the following material; installed:					
30′ chestnut poles	306	ea.	$21.07	6,447	
30′ white cedar poles	182	ea.	19.14	3,483	
30′ red cedar poles	117	ea.	23.26	2,721	
35′ chestnut poles	88	ea.	27.33	2,405	
35′ white cedar poles	58	ea.	25.79	1,496	
35′ red cedar poles	30	ea.	56.76	1,703	
40′ chestnut poles	12	ea.	30.10	361	
35′ iron poles	32	ea.	118.59	3,795	
4-pin cross arms	35	ea.	3.25	114	
1-pin brackets	216	ea.	.95	205	
Cross arm pins	251	ea.	.05	13	
Guy anchors	76	ea.	7.61	578	
Bracket arms	10	ea.	9.01	90	
Eyebolts	1,005	ea.	.59	593	
Spare material:					
Chestnut poles, 30′	8	ea.	16.24	130	
Bracket arms	4	ea.	5.81	23	
Total Acct. 519				$24,157	$20,368

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
521.	Distribution System:					
	16.0 miles of single circuit overhead trolley, comprising the following material; installed:					
	#2/0 hard drawn trolley wire, 84,193 lin. ft.	33,846	lb.	$.27	$9,138	
	Straight line hangers	769	ea.	2.06	1,584	
	Pull-offs (single)	265	ea.	3.32	880	
	Pull-offs (double)	75	ea.	3.65	274	
	Barn hangers	111	ea.	3.01	334	
	Ears	1,241	ea.	1.91	2,370	
	Barn anchors	1	ea.	.....	3	
	Strain plates	36	ea.	15.17	546	
	Frogs	46	ea.	11.55	531	
	Crossings (rigid)	5	ea.	13.46	67	
	Splice ears (15")	60	ea.	6.75	405	
	Splice ears (12")	27	ea.	5.96	161	
	Strain insulators (wood)	2,014	ea.	1.73	3,484	
	Strain insulators (porcelain)	69	ea.	4.17	288	
	St-ain insulators (fibre)	23	ea.	9.58	220	
	⅜" 7-strand guy wire	432	100 ft.	7.14	3,084	
	¼" 7-strand guy wire	477	100 ft.	5.62	2,681	
	Lightning arresters	18	ea.	46.74	841	

Section insulators	9	ea.	13.90	125
Sectionalizing switch	1	ea.	.....	34
Trolley trough	900	ft.	.64	576
4.0 miles of feeder cable, comprising the following material; installed:				
#4/0 T. B. W. P. stranded copper feeder—28,123 lin. ft.	22,498	lb.	.30	6,749
# 2/0 T. W. B. P. stranded copper feeder—1,661 lin. ft.	867	lb.	.31	269
#2/0 feeder taps	2	ea.	11.97	24
#4/0 feeder taps	19	ea.	15.62	297
211				
Feeder insulators (glass)	226	ea.	$.19	$43
Trimming trees for feeders, etc.	4.5	mi.	51.00	230
Return feeder, comprising the following material installed:				
#2/0 T. B. W. P. stranded copper feeder (aerial) 1,714 l. f.	895	lb.	.31	277
#4/0 T. B. W. P. stranded copper feeder (underground)	520	l. f.	.45	234
500,000 c. m. T. B. W. P. stranded copper feeder (aerial) 1,091 l. f.	2,066	lb.	.30	620

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	16.0 miles of track bonding installed as follows:					
	Electric weld #4/0 bonds	3,817	ea.	1.74	6,642	
	Gas weld #4/0 bonds	529	ea.	1.56	825	
	Compressed #4/0 terminal bonds	1,157	ea.	2.64	3,054	
	Cross bonds #4/0 with driven ground	8	ea.	32.08	257	
	Cross bonds #2/0 with driven ground	4	ea.	84.04	336	
	Units of special work bonded	134	ea.	48.88	6,550	
	Connection to aerial feeder	2	ea.	183.83	368	
212	Spare material:					
	3/8" 7 strand guy wire	15	100 ft.	$3.61	$54	
	1/4" 7 strand guy wire	10	100 ft.	2.09	21	
	#2/0 round trolley wire (10,600 l. f.)	4,258	lb.	.27	1,150	
	Miscellaneous material				1,000	
	Total, Acct. 521				$56,626	$48,732

523. **Shops and Car Houses:**

Broadway Car Barn:

Yard:

Board fence	4,830	s. f.	$.21	$1,014
1" pipe rail	100	l. f.	.35	.35
Sidewalk, concrete	36	s. y.	2.71	98
Macadam	800	s. y.	2.00	1,600
Grass plot	10,000	s. f.	.03	300

Building:

Excavation	680	c. y.	2.90	1,972
Backfill	48	c. y.	0.44	21
Concrete—1-3-6 mix	246	c. y.	12.20	3,001
Forms	3,875	s. f.	0.25	969
Stairs—concrete	200	l. f.	0.63	126
Brick—common	184	M	63.00	11,592
Floor—cinder concrete	7,141	s. f.	0.13	928
Lumber Y. P.	73.2	MBM	95.00	6,954
Siding—corr. asbestos Protected metal	6,936	s. f.	0.315	2,185
Sash-wood—double hung	647	s. f.	1.26	815
Roofing—5-ply tar and gravel	19,080	s. f.	0.157	2,996

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Sheet metal work:					
	Flashing—Toncan metal	1,060	s. f.	$0.25	$265	
	Coping—Toncan Metal	300	s. f.	.25	75	
	Skylights with 24″ vents	480	s. f.	1.55	744	
	Gutters, galv. 6″	320	l. f.	0.38	122	
	Downspouts, galv. 4″	108	l. f.	0.38	41	
	Vitrified tile coping 8″	290	l. f.	0.315	91	
	Doors:					
	2″ fire sliding	21.7	s. f.	1.76	38	
	2″ wood built-up	195	s. f.	1.00	195	
	Plastering—cement on metal lath	55.9	s. y.	1.64	92	
	Painting—lead and oil	187	s. y.	0.57	107	
	Painting—cold water	4,670	s. y.	0.165	771	
	Miscellaneous iron work	320	lb.	0.075	24	
	Plumbing fixtures:					
	1 toilet and sink	1	set	208.00	208	
	Slate partitions	40	s. f.	1.39	56	
	Sprinkler system	262	heads	12.60	3,301	
	Heating	9	coils	.....	675	

Miscellaneous fire protection apparatus	.....	l. s.	.....	200	
Lighting—exposed conduits outlets	40	....	26.50	1,060	
Total Car Barn				$42,671	$40,537

NOTE.—Boiler is included with office building and Sprinkler system is included with carn barn.

Office Building:

Excavation	56	c. y.	2.90	162
Backfill	28	c. y.	0.44	12
Brick—common	72.6	M	63.00	4,574
Lumber Y. P.	6.95	MBM	95.00	660

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Floor concrete-1-2-4	40	c. y.	18.60	744
Flooring—2″ Y. P.	810	s. f.	0.11	89
Screeds 2″ x 3″	621	l. f.	0.10	62
Granolithic flooring	1,350	s. f.	0.09	122
Roofing—5-ply tar and gravel	2,260	s. f.	0.157	355
Doors—std. mill-interior	210	s. f.	1.46	307
Doors—std. mill-exterior	51	s. f.	1.34	68
Sash-wood, double Hung	308	s. f.	1.24	382
Partitions—T. & G.	2,575	s. f.	0.21	541
Painting—lead and oil	394	s. y.	0.57	225
Vitrified tile coping 13″	200	s. f.	0.48	96

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Toilet fixtures:					
	Toilets	4	ea.	.....	.....	
	Basins	5	ea.	1. s.	560	
	Shower	1	.....	.....	26	
	Miscellaneous iron work	133	lb.	0.075	10	
	Slate partitions	132	s. f.	1.39	183	
	Varnishing	619	s. y.	0.63	390	
	Downspouts—galv. 4"	12	l. f.	0.38	5	
	Flashing—Toncan metal	300	s. f.	0.25	75	
	Lighting exposed conduit outlets	15	ea.	26.50	398	
	Heating:					
	60 h. p. boiler	60	h. p.	38.00	2,280	
	Piping 2"	200	l. f.	0.53	106	
	Radiators—setting	6	ea.	7.70	46	
	Radiation	225	s. f.	0.53	119	
	Total, Office Building				$12,597	$11,967
	Storage shed, 25' x 12' wood siding, ready roofing, wood floor, one partition	300	s. f.	1.90	$570	$285

	Oil house, 10′ x 12′ corrugated iron siding, brick floor.....					
215		120	s. f.	$2.52	$302	$272
	Total, Acct. 523.....				$56,140	$53,061
530.	Passenger and combination cars:					
	28 passenger cars ready to operate, as follows:—					
	Closed, single truck, double end, steel sheathed, 34′-6″ over-all motor passenger cars, 12 reversible slat cross seats, 4 short slat stationary seats, lift sash, arch roof, 5′-6″ drop platforms, built-up wind shields, Nos. 21, 22, 23 and 24	4	ea.	$4,253.00	$17,012	
	Closed, double truck, double end, wood, 44′-6″ overall motor passenger car, 16 reversible slat cross seats, 4 short slat seats, lift sash, monitor roof, 4′-8″ drop platform,					
216	built-up wind shields, No. 92....	1	ea.	.....	5,370	
	Closed, double truck double end, wooden and steel, 41′-8″ overall motor passenger car, 18 reversible slat cross seats, 4 short slat stationary seats, lift sash, monitor roof, 5′-2″ drop platforms, built-up wind shields, No. 95.....	1	ea.	.....	5,152	

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Semiconvertible, double truck, double end, wooden, 39′ 0″ overall motor passenger cars, 12 reversible rattan cross seats, 4 long stationary rattan seats, lift sash, monitor roof, 4′-8″ drop platforms built-up wind shields Nos. 1, 2, 3, and 4	4	ea.	5,709	22,836	
	Semiconvertible single truck, double end, part steel body, 28′ 0″ overall motor passenger cars, 12 reversible rattan paneled cross seats, lift sash, arch roof, 4′-8″ drop platforms, built-up wind shields, Nos. 40, 42, and 44.....	3	ea.	3,362	10,086	
217						
	Semiconvertible, double truck double end, wooden, 39′ 0″ overall motor passenger cars, 2 longitudinal stationary rattan seats, lift sash, monitor roof, 4′ 8″ drop platforms, built-up wind shields, Nos. 101 and 104.....	2	ea.	4,928	9,856	

	Semiconvertible, double truck, double end, wooden, 35′ 6″ overall motor passenger cars, 10 cross reversible rattan seats, 2 long stationary rattan seats, lift sash, monitor roof, 4′ 6″ drop platform, built-up wind shield, Nos. 102 and 103.....	2	ea	3,353	6,706
	Open double truck, double end, wooden, 26 post, 22 reversible slat cross easts 4 short slat stationary seats, 41′ 0″ overall motor passenger car, monitor roof, 4′ drop platform No. 93.....	1	ea.	.....	3,938
218					
	Open, double truck, double end, wooden, 30-post, six slat bench, 10 long slat stationary seats, 52′ 0″ overall motor passenger car, monitor roof, 3′ 6″ continuous platforms, No. 94.....	1	ea.	.....	6,028
	Open, double truck, double end, wooden, 12-post, [illegible] slat bench 40′ 6″ overall motor passenger car, monitor roof, 4′ 8″ continuous platform No. 96.....	1	ea.	.....	3,696
	Open, single truck, double end, wooden, 23′-6″ overall trailer cars, 12 reversible slat cross seats, monitor roof, 3′-6″ continuous platforms, Nos. A, C, D, E, and H..	5	ea.	1,848	9,240

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Open, single truck, double end, wooden, 20′-6″ overall trailer cars, 7 bench, monitor roof, 3′-6″ continuous platforms, Nos. B, F, and G	3	ea.	1,386	4,158	
	Total, Passenger Cars				$104,078	$88,466
219						
	28 Equipments of passenger car trucks, ready for service as follows:					
	Brill #21-E, single trucks, with 7′ 0″ wheel base, 33″ C. I. wheels, 4″ axles, cars No. 21, 22, 23, 24, 40, 42, and 44	7	ea.	$680	$4,760	
	McGuire, single trailer trucks, with 6′ 0″ wheel base, 24″ C. I. wheels, 2½″ axles, Cars No. A, C, D, H, and E	5	ea.	616	3,080	
	McGuire, single trailer trucks, with 6′ 0″ wheel base, 30″ C. I. wheels, 2½″ axles, Cars No. B, F, and G	3	ea.	530	1,590	

McGuire, double trucks, with 4′ 6″ wheel base, 30″ C. I. wheels, 4″ axles, Cars No. 92, 93, and 94...	3	prs.	1,430	4,290	
St. Louis, #47 double trucks, with 4′ 6″ wheel base, 33″ C. I. wheels, 4″ axles, Cars No. 95 and 96....	2	prs.	1,460	2,920	
Brill #27-G1, double trucks, with 4′ 6″ wheel base, 33″ C. I. wheels, 4″ axles, Cars No. 1, 2, 3, 4, 101, 102 and 104.....	7	prs.	1,475	10,325	
St. Louis, maximum traction, double trucks, with 4′ 4″ wheel base, 2-33″ C. I. wheels and 2-24″ C. I. wheels, 4″ axles, Car No. 103...	1	pr.	.....	1,230	
Car trucks, not ready for service as follows:					
St. Louis, #47 double trucks, with 4′ 6″ wheel base, 33″ C. I. wheels, 4″ axles	2	prs.	1,460	2,920	
Total Passenger Car Trucks.....				$31,115	$27,381

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Extra and additional equipment parts installed in cars:					
	Peacock hand brake equipment for single truck cars	30	sets	33.	990	
	Peacock hand brake equipment on double truck cars	26	sets	40.	1,040	
	Plain incandescent headlights	4	ea.	18.	72	
	Semaphore lens incandescent headlights	44	ea.	18.	792	
	Single fare registers	8	ea.	39.	312	
	Double fare registers	1	...	.....	60	
	Equipment for fare register	5	sets	.....	332	
	Trolley catchers	32	ea.	16.	512	
	Folding platform gates	2	ea.	35.	70	
	Brill radial street railway couplers	62	ea.	50.	3,100	
221						
	Block side signs	52	ea.	$12.00	$624	
	Illuminated block signs	26	ea.	52.00	1,352	
	Johnson fare boxes	16	ea.	135.00	2,160	
	R. I. C. coasting recorders	16	ea.	130.00	2,080	
	Sanders	4	ea.	60.00	240	
	Consolidated car heaters	32	ea.	22.00	704	
	Johns-Manville car heaters	34	ea.	12.00	408	
	Total, extra and additional parts				$14,848	$13,303

	Spare material:—					
	4″ axles	16	ea.	16.00	256	
	33″ C. I. wheels	35	ea.	7.00	245	
	Total, spare parts				$501	$501
	Total, acct. 530				$150,542	$129,711
532.	Service equipment:					
	Double truck, center operation, motor flat car with operator's cab in center, used as work and line car, 30′-5″ over bumpers, mounted on St. Louis 4′-6″ wheel base truck with 4″ axles and 30″ C. I. wheels	1	ea.	.....	$4,400	
222	Single truck, double end snowplow and work car, baggage car type, 20′ over bumpers, on McGuire trucks with 7′-6″ wheel base, 4″ axles, and 35″ C. I. wheels	1	ea.	.....	$4,000	
	Total, acct. 532				$8,400	$,7140

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
533.	Electric equipment of cars:					
	Electrical equipment installed on foregoing cars and ready for service, as follows:—					
	Double equipments of Westinghouse 12A motors with General Electric K10 controllers, M. R. or equivalent circuit breakers, choke coils, resistance and single trolleys.....	6	ea.	$2,385	$14,310	
	Ditto, except two trolleys.....	1	ea.	.....	2,453	
	Ditto, except one controller and one trolley	1	ea.	.....	2,115	
	Double equipments of General Electric 80 motors with General Electric K10 controllers, M. R. or equivalent circuit breakers, choke coils, resistance and single trolley.	2	ea.	2,858	5,716	
	Ditto, except two trolleys.....	7	ea.	2,925	20,475	
223						
	Double equipment of General Electric 200A motors with General Electric K10 controllers, type M. R. or equivalent circuit breakers,					

	trolley	4	ea.	$3,173	$12,692	
	Double equipment of Westinghouse 3 motors with General Electric K10 controllers, M. R. or equivalent circuit breakers, choke coils, resistance and two trolleys	1		.....	2,734	
	Total, electric equipments				$60,495	$45,977
	Spare material:—					
	General Electric 200 armature	1		.....	440	
	Westinghouse #3 armature	1		.....	380	
	General Electric #12-A armature	6	ea.	325	1,950	
	General Electric #80 armature	1		.....	425	
	General Electric K10 controllers	11	ea.	248	2,728	
	Total, spare material				$5,923	$5,331
	Total, acct. 533				$66,418	$51,308
224						
536.	Shop equipment:					
	1½ h. p. G. E. motor	1		.....	$89	
	Forge and blower	1		.....	26	
	50 ton wheel press	1		.....	1,890	
	26″ lathe	1		.....	3,680	
	14″ shaper	1		.....	840	
	24″ drill press	1		.....	262	

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	16″ drill press	1		.....	236	
	Water pump	1		.....	26	
	Water jack	1		.....	84	
	Pit jack	1		.....	79	
	1″ coal oil heaters	8	ea.	$8.40	67	
	10-ton triple hoist	1		.....	336	
	Swinging cranes (1-ton)	5	ea.	$89.20	446	
	¼ h. p. motor	1		.....	64	
	Platform scale	1		.....	26	
	5 h. p. a-c. motors	2	ea.	126.00	252	
	9½ h. p. d-c. motor	1		.....	304	
	Air compressor	1		.....	210	
	Universal woodworking machine	1		.....	604	
	Grindstone	1		.....	16	
	7½ h. p. d-c. motor	1		.....	278	
	15 h. p. d-c. motor	1		.....	361	
	Ripsaw table	1		.....	289	
	Automatic lowering jacks (15-ton)	4	ea.	26.00	104	
	Car jacks (15-ton)	2	ea.	26.00	52	
	Miscellaneous small tools, comprising hammers, chisels, drills, stocks, dies, vises, etc.		l. s.	.....	735	
	Total, acct. 536				$11,356	$8,517

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
537.	Furniture:					
	Miscellaneous office furniture and fixtures comprising desks, tables, chairs, cages, lockers, filing equipment, typewriters, calculation machines and the like.....	.....	.....	.....	$2,940	
	Total, Acct. 537.....				$2,940	$2,352
538.	Miscellaneous equipment:					
	Ford truck, 1-ton capacity.....	1	.....	.....	$760	
	Total, Acct. 538.....				$760	$570

226 *Property Outside Paducah City Limits.*

227 Details of Appraisal Property Outside Paducah City Limits.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
502.	Right of Way:					
	Private right of way on Park and Avondale Lines	8	acres	$225.00	$1,800	
	Total, Acct. 502				$1,800	$1,800
504.	Grading:					
	Excavation and disposal of loose material	9,950	c. y.	3.15	$31,342	
	Total, Acct. 504				$31,342	$31,342
505.	Ballast:					
	Gravel—6″ below bottom of tie to top rail	4,755	c. y.	1.89	$8,987	
	Total Acct. 505				$8,987	$8,987

506.	Ties:					
	6″ x 8″ x 8′ 0″ white oak cross ties (seconds)	5,375	ea.	1.07	$5,751	
	Total, Acct. 506				$5,751	$3,566
507.	Rails, Rail Fastenings and Joints:					
	60 lb. low tee rail	23.20	G. T.	89.46	$21,220	
	Angle bar joints for 60 lb. rail	936	ea.	2.84	2,658	
	Spikes	43	keg.	7.56	325	
228	Total, Acct. 507				$24,203	$18,152
508.	Special Work:					
	Hard center switches—60 lb. rail	1		.....	$277	
	Hard center mates—60 lb. rail	1		.....	239	
	Hard center frogs—60 lb. rail	1		.....	126	
	60 lb. low tee rail	19.96	G. T.	89.46	1,786	
	Chocks and bolts	1,700	lb.	0.76	129	
	Total, Acct. 508				$2,557	$1,892
510.	Track and Roadway Labor:					
	Labor distributing and spacing ties, laying steel and surfacing	13,395	l. f.	0.47	$6,296	
	Extra labor laying curves	1,300	l. f.	0.47	611	
	Labor laying special work	3	pcs.	35.28	106	
	Total, Acct. 510				$7,013	$6,101

Details of Appraisal, Property Outside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
519.	Poles and Fixtures:					
	2.2 miles of single circuit pole line, comprising the following; material; installed:					
	30′ chestnut poles	27	ea.	21.07	$569	
	30′ white cedar poles	13	ea.	19.14	249	
	30′ red cedar poles	14	ea.	23.26	326	
	35′ chestnut poles	45	ea.	27.33	1,230	
	35′ white cedar poles	21	ea.	25.79	542	
	35′ red cedar poles	23	ea.	56.76	1,305	
229						
	1-pin brackets	125	ea.	.98	$122	
	Insulator pins	125	ea.	.05	6	
	Guy anchors	40	ea.	7.61	304	
	Bracket arms	125	ea.	9.00	1,125	
	Eyebolts	72	ea.	0.59	42	
	Spare material:					
	Chestnut poles	2	ea.	16.24	32	
	Bracket arms	4	ea.	5.81	23	
	Total Acct. 519				$5,875	$4,958

521.	Distribution system:				
	2.2 miles of single circuit trolley, comprising the foll-wing material; installed:				
	#3/0 hard drawn trolley wire 13,-613 lin. ft.	5,472	lb.	.27	$1,477
	Straight line hangers	135	ea.	2.06	278
	Pull-offs (single)	52	ea.	3.32	173
	Pull-offs (double)	12	ea.	3.65	44
	Barn hangers	8	ea.	3.01	24
	Ears	387	ea.	1.91	739
	Strain plates	6	ea.	15.17	91
	Frogs	4	ea.	11.55	46
	Crossings (rigid)	1	ea.	.....	13
	Splice ears (12")	2	ea.	5.96	12
	Strain insulators (wood)	198	ea.	1.73	343
	3/8" 7-strand guy wire	100	100 ft.	7.14	714
	1/4" 7-strand guy wire	54	100 ft.	5.62	303
	Lightning arresters	2	ea.	46.74	93
	Section insulator	1	.....	.....	14
	Trolley trough	15	ft.	.64	10
230	2.2 miles of feeder cable, comprising the following material; installed:				
	300,000 c. m. T. B. W. P. stranded copper feeder 5,617 lin. ft.	6,594	lb.	.30	$1,978
	#4/0 feeder taps	7	ea.	15.62	109
	Feeder insulators (Glass)	150	ea.	.19	29
	Trimming trees for feeders, etc.	5	mi.	51.	26

Details of Appraisal, Property Outside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	2.2 miles of track bonding installed as follows:					
	Gas weld #4/0 bonds	602	ea.	1.56	939	
	Compression #4/0 terminal bonds	362	ea.	2.64	956	
	Cross bonds #4/0 with driven ground	2	ea.	32.08	64	
	Cross bonds #2/0 with driven ground	1	.....	.....	84	
	Units of special work, bonded	3	ea.	48.88	147	
	Spare material:					
	3/8" 7-strand guy wire	5	100 ft.	3.61	18	
	1/4" 7-strand guy wire	5	100 ft.	2.09	11	
	#2/0 round trolley wire 10,600 ft.	4,258	lb.	.27	1,150	
	Miscellaneous material				644	
	Total, Acct. 521				$10,529	$8,980
524.	Stations, Miscellaneous Buildings and Structures:					
	Waiting stations:					
	Near Wallace Park 12' x 14' frame					

231	At Wallace Park Open, 4-post, 8′ x 8′ frame structure, shingle roof, dirt floor	64	s. f.	2.52	161	
	At Country Club 10′ x 10′ open, 4-post, frame structure, dirt floor, ready roofing	100	s. f.	2.40	240	
	Total, Act. 524				$719	$381
530.	Passenger and Combination Cars:					
	2 Passenger cars, ready to operate, as follows:					
	Closed, single truck, double end, steel sheathed, 34′-6″ over all motor passenger cars, 12 reversible slat cross seats, 4 short slat stationary seats, lift sash, arch roof, 5′-6″ drop platforms, built-up wind shields, No. 20 and 25	2	ea.	4,253	$8,506	$7,230
	Car trucks, ready for service as follows:					
	Brill #21-E single trucks with 7′-0″ wheel base, 33″ C. I. wheels, 4″ axles (for cars No. 20 and 25)	2	ea.	680	$1,360	$1,197

Details of Appraisal, Property Outside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
232	Extra and additional equipment parts installed on foregoing cars:					
	Peacock hand brake equipment for single car trucks	4	sets	33	$132	
	Semaphore lens incandescent headlights	4	ea.	18	72	
	Trolley catchers	2	ea.	16	32	
	Brill radial street railway couplers	4	ea.	50	200	
	Block side signs	4	ea.	12	48	
	Illuminated block signs	4	ea.	52	208	
	Johnson fare boxes	2	ea.	135	270	
	R. I. Co. Coasting recorders	2	ea.	130	260	
	Consolidated car heaters	8	ea.	22	176	
	Total account, Acct. 530				$11,264	$9,685

533.	Electric equipment for cars:					
	Electrical equipment installed and ready for service, as follows:					
	Double equipment of General Electric 200A. motors with General Electric K10 controllers, M. R. or equivalent, circuit breakers, choke coils, resistance and single trolley	2	ea.	3,173	$6,346	
	Total acct. 533				$6,346	$5,204

233 The following is the Appraisal of property of the Paducah Railway Company Inc., Paducah Kentucky at 1914 prices Stone & Webster, Inc. Boston Mass. Filed Dec. 20, 1920 A. G. Ranald Clark, by W. A. Blackburn, D. C.

RICHARD J. MARTIN,
Notary Republic.

"B."

Stone & Webster,

Division of Construction and Engineering.

Memorandum.

J. O. No. 3414.

Boston, December 8, 1920.

To Management Division:

Attention Mr. H. T. Edgar.

In accordance with your request, we have on appraisal of the cost to reproduce, new, the property of the Paducah Railway Company. Incorporated, based on prices as of June 30, 1914. The total figure is as follows:

Cost to reproduce, new, at 1914 prices $715,520

As further requested we have also computed the "accrued depreciation" of the property by estimating the amounts necessary to restore each part of the property to first-class operating condition, the resultant figure being $100,047.

The value of the property thus determined as $615,473 and so stated in our appraisal does not, in our opinion, necessarily represent the true value of the property for rate making purposes, which we believe to be equivalent to the cost *of* reproduce, new.

For further information and details, kindly see the pages following.

Yours very truly,

DIVISION OF CONSTRUCTION AND ENGINEERING,
By P. JUNKENSFIELD.

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5 Description of Property.

This appraisal covers all property of every kind including land ned by the Paducah Railway Company, Inc., and located in the y of Paducah, Kentucky and its immediate vicinity.
The property consists of the following principal items:

3. Parcels of land, including rights of way.
18.25 miles of equivalent single track, surface type construction ated as follows:
Inside city limits—16.05 miles
Outside " " — 2.20 miles

3. Miscellaneous buildings, including car barn, shops, office build-gs, storage sheds and waiting stations.

8. Bridges and culverts.

32. Passenger and miscellaneous service cars.

Complete distribution systems, consisting of approximately 18.25 miles of single overhead trolley and 6 miles of feeder cable.

Shop equipment and tools, furniture and fixtures.

Inventory.

The inventory made for the purpose of this appraisal is based on the status existing on September 1, 1920 and includes all property owned by the Paducah Railway Company Inc. A complete and independent field survey was made of the entire property in order to ascertain quantities and character of individual items. The length of the entire track was measured by the Railway Company's forces and checked by our engineers. The quantities thus determined were further checked by scaling from the latest city maps and found to be in substantial agreement.

The several types of track and track construction as well as quantities and kinds of all other component parts of the systems were determined by our engineers by field inspection and count.

Arrangement of Appraisal.

The property as determined by this inventory is arranged according to the standard classification of accounts as prescribed by the Interstate Commerce Commission and has been priced on the basis of

236 Cost to Reproduce, New at prices as of June 30, 1914.

Cost to Reproduce, New at prices as of June 30, 1914. Less depreciation.

The Cost to Reproduce, New represents the estimated cost of reproducing the property as a new concern using the prices effective at the time above stated but assuming the same conditions as existed when the property was first constructed.

The cost to Reproduce, New less depreciation, Represents the cost of new, with deductions for the amounts necessary to rehabilatate the property or bring it to a point of first-class operating condition.

(*a*) Ownership:

The ownership of individual items was determined from the Company's records.

(*b*) Summaries:

The following summaries have been prepared:

1. Cost to Reproduce, New, and less depreciation, the entire property inside and outside the city limits of Paducah.

2. Cost to Reproduce, New, and less depreciation, the property located outside the city limits of Paducah.

(*c*) Unit costs:

Prices for material and equipment used in this appraisal were obtained from local dealers and manufacturers in Kentucky or vicinity wherever possible. In other instances quotations were secured from standard manufacturers and dealers.

The car barn land was appraised in January, 1919 by Messrs. Lacky and Phillips of Paducah. The cost as of that date was adjusted to 1914 conditions. The cost of right of way was computed by our engineers on basis of prices for similar property in the section.

Labor rates, freight rates, cost of haulage, etc. are those which were in force in the Paducah District on the date stated above.

Miscellaneous structured costs as field engineering and superintendence, office at works, temporary construction, insurance during construction and depreciation of construction equipment have been included in the unit costs, as percentages of labor and material.

An allowance of 5% was made for ommissions and contingencies on all track accounts and 10% in the case of trolley and feeder materials. No such allowances was made on rolling stock and equipment.

237 (*d*) Contractors Service:

An allowance of 10% was made in the unit costs for Contractors Service on all items of material and labor, except as noted below, on the assumption that the entire property would be constructed by contractors under the supervision of the company's own organization.

No allowance was made for Contractors Services on land, right of way, rolling stock, shop equipment, furniture, miscellaneous equipment and material and supplies, items which would ordinarily be purchased by the company direct.

The net amount, therefore, included for Contractors Services is approximately 7.2% of the total of material and labor.

General Construction Costs.

In order to properly determine the amounts of general construction costs, a construction period of one year was assumed. As this expense can not be distributed accurately among the various items of material and equipment it has been included separately under the following headings:

Engineering Cost.
Law Expenditures during Construction.
Interest during Construction.
Injuries and Damages.
Taxes during Construction.
Administrative Organization Expenses during Construction.

(*a*) Engineering cost:

Engineering cost consists of the salaries and expenses of the chief engineer and his staff of assistants engaged in making working plans,

estimates, specifications, contracts, purchases and shop inspection of equipment and materials, and executing detailed technical supervision of the work.

(*b*) Law expenditures during construction:

Law expenditures consist of the salaries and expenses of counsel, solicitors, and attorneys engaged on legal matters incurred on account of construction.

(*c*) Interest during construction:

Interest during construction consists of interest paid on moneys acquired for use in connection with expenditures incidental to the construction and equipment of the road and was computed at 6% on one-half of the cost of the entire property for a period of one year.

(*d*) Injuries and damages:

Injuries and damages comprise the amounts paid in settlement of injuries to persons and for damages inflicted upon adjacent property during and incidental to construction work; also all legal and other expenses incurred in connection with such payments.

(*e*) Taxes during construction:

Taxes during construction consist of taxes and assessments levied on the property during the construction period. The amount included is based on the normal tax rate obtaining in Paducah,
238 and figuring for one-half the construction period at that rate.

(*f*) Administrative organization expenses during construction:

The amount included for this item is made up of salaries and expenses of the general body directing the work, cost of stationery and supplies and other office charges.

Organization Prior to Construction.

It was assumed that one year would elapse from the inception of the project until construction operations were commenced. The expenses shown for this period comprises the cost of a preliminary investigation, publicity work, the selling of securities and the cost of work preformed by the permanent administrative, legal and technical organizations prior to the commencement of actual work. These activities are more fully described in the following.

(*a*) Preliminary investigation:

This work comprises a study of the general situation relative to the construction and successful operation of the system contemplated, involving consultation with legal authorities, and engineers, plans for financing publicity work, and the like.

(*b*) Financial expenses:

The financial expenses consist of the cost of soliciting subscriptions for securities, the preparation and issuance of securities certificates and the actual cost of selling such securities.

(*c*) Permanent organizations:

The work of the permanent organizations involves detailed studies of population, its growth, density and direction of movement, studies of probable traffic, based on conditions in other cities; selection routes sites, for cars barns and other buildings, etc.; the preparation of preliminary plans, cost estimates of various schemes, calculations of probable earnings and operating expenses; hearings before public authorities, study of transportation laws, and other similar matters.

Working Capital.

The working capital consists of cash balances and materials and supplies on hand. The amounts included in the appraisal represent the average of cash and materials and supplies on hand for the six years from 1910 to 1915 inclusive. This total was apportioned to the property located within and without the city limits, respectively on the basis of total costs of material and labor represented by each.

Items Omitted.

This appraisal does not include the following items:

(*a*) Going concerns value and development cost.

(*b*) Special value of land for railway purposes.

(*c*) Profits of promotion.

(*d*) Discounts on securities.

239 (*e*) Net investment in superseded property.

(*f*) Franchise costs.

Records.

The complete records, covering the field inventory, computations, appraisal details, unit costs of material and labor and all other supporting data are filed in two separate volumes.

240 Paducah Railway Company, Inc.

Estimated Cost of Reproduction of Property New and Less D preciation Based on Inventory as of Sept. 1, 1920, Prices as *June* 30, 1914.

General Summary.

Account.	Item.	Cost to reproduce n June 30, 1914.	Less depreciati
	Property inside City Limits	$645,570	$554,6
	Property Outside City Limits	$69,950	$60.8
	Grand Total, All Property	$715,520	$615,4

241 Paducah Railway Company Inc.

Estimated Cost of Reproduction of Property New and Less D preciation Based on Inventory as of Sept. 1, 1920, *and Prices as June* 30, 1914.

Total Property Used in Railway Operation.

Account.	Item.	Cost to reproduce n June 30, 1914.	Less depreciati
	I. Land.		
502.	Right of way	$4,640	$4,6
503.	Other Land used in Electric Ry. Operation	$4,800	$4,8
	Total I	$9,440	$9,4
	II. Construction and Equipment.		
504.	Grading	$38,530	$38,5
505.	Ballast	57,538	52,2
506.	Ties	24,629	20,4
507.	Rails, Rail Fastenings, and Joints	115,200	88,4
508.	Special work	30,871	22,2
510.	Track and Roadway Labor	48,877	42,5
511.	Paving	39,247	32,1
512.	Roadway Machinery and Tools	797	5
515.	Bridges, Trestles, and Culverts	10,460	9,4
516.	Crossings, Fences, and Signs	90	
519.	Poles and Fixtures	13,664	11,5
521.	Distribution Systems	40,785	34,9
523.	Shops and Car Houses	25,526	24,1

Account.	Item.	Cost to reproduce new. June 30, 1914.	Less depreciation.
524.	Stations, Misc. Buildings and Struct. . .	289	153
530.	Passenger and Combination Cars	75,651	65,261
532.	Service Equipment	3,800	3,230
533.	Electric Equipment of Cars	32,338	20,383
536.	Shop Equipment	6,438	4,828
537.	Furniture	1,365	11,092
538.	Miscellaneous Equipment	395	296
	Total	566,490	472,550
242			
501.	Engineering Cost	$16,995	$14,176
546.	Law Expenditures	5,655	4,726
547.	Interest During Construction	27,998	27,998
548.	Injuries and Damages	5,665	4,726
549.	Taxes During Construction	3,292	3,292
550.	Administrative Organization Expenses during Construction	8,498	7,088
	Total II.....	$634,603	$534,554
	III. Organization Prior to Construction.		
550.	(*a*) Preliminary Investigation.....	5,000	5,000
550.	(*b*) Cost of Selling Securities.....	35,800	35,800
550.	(*c*) Technical and Legal Expenses...	7,789	7,789
550.	(*d*) Interest on (*a*), (*b*), (*c*).....	5,888	5,888
	Total III.....	$54,477	$54,477
	IV. Working Capital.		
	Materials and Supplies.....	$7,500	$7,500
	Minimum Cash Balance.....	9,500	9,500
	Total IV.....	$17,000	$17,000
	Total Property	$715,520	$615,473

243 Paducah Railway Company, Inc.

Estimated Cost of Reproduction of Property New and Less Depreciation Based on Inventory as of Sept. 1, 1920, and Prices as of June 30, 1914.

Property Used in Railway Operation Inside City Limits.

Account.	Item.	Cost to reproduce new. June 30, 1914.	Less depreciation
	I. Land.		
502.	Right of Way	$3,200	$3,200
503.	Other Land Used in Elec. Ry. Operation	4,800	4,800
	Total II	$8,000	$8,000
	II. Construction and Equipment.		
504.	Grading	$29,177	$29,177
505.	Ballast	53,068	47,761
506.	Ties	21,565	18,548
507.	Rails, Rail Fastenings, and Joints	100,148	77,114
508.	Special Work	29,349	21,131
510.	Track and Roadway Labor	45,294	39,406
511.	Paving	39,247	32,183
512.	Roadway Machinery and Tools	797	598
515.	Bridges, Trestles, and Culverts	10,460	9,414
516.	Crossings, Fences, and Signs	90	81
519.	Poles and Fixtures	10,970	9,226
521.	Distribution System	34,127	29,347
523.	Shops and Car Houses	25,526	24,101
530.	Passenger and Combination Cars	70,321	60,669
532.	Service Equipment	3,800	3,230
533.	Electric Equipment of Cars	29,518	18,071
536.	Shop Equipment	6,438	4,828
536.	Furniture	1,365	1,092
538.	Miscellaneous Equipment	395	296
244	Total	$511,655	$426,273
501.	Engineering Cost	15,350	12,788
546.	Law Expenditure	5,117	4,263
547.	Interest during Construction	25,240	25,240
548.	Injuries and Damages	5,117	4,263
549.	Taxes during Construction	2,968	2,968
550.	Administrative Organization Expenses during Construction	7,675	6,394
	Total II	$573,122	$482,189

count.	Item.	Cost to reproduce new. June 30, 1914.	Less depreciation.
	III. Organizations Prior to Construction.		
0.	(*a*) Preliminary Investigations	$4,500	$4,500
0.	(*b*) Cost of Selling Securities.....	32,300	32,300
0.	(*c*) Technical and Legal Expenses...	7,035	7,035
0.	(*d*) Interest on (*a*), (*b*), and (*c*)....	5,313	5,313
	Total III	$49,148	$49,148
	IV. Working Capital.		
	Materials and Supplies.....	$6,750	$6,750
	Minimum Cash Balance.....	8,550	8,550
	Total IV	$15,300	$15,300
	Total property inside city limits	$645,570	$554,637

5 Paducah Railway Company, Inc.

stimated Cost of Reproduction of Property New and Less Depreciation Based on Inventory as of Sept. 1, 1920, *and Prices as of June* 30, 1914.

Property Used in Railway Operation Outside City Limits.

	I. Land.		
02.	Right of Way.....	$1,440	$1,440
	Total I	$1,440	$1,440
	II. Construction and Equipment.		
04.	Grading	$9,353	$9,353
05.	Ballast	4,470	4,470
06.	Ties	3,064	1,900
07.	Rails, Rail Fastenings and Joints....	15,052	11,289
10.	Track and Roadway Labor.....	3,583	3,117
08.	Special Work	1,522	1,126
19.	Poles and Fixtures.....	2,694	2,316
21.	Distribution System	6,658	5,649
24.	Stations, Misc. Buildings and Structures		
30.	Passenger and Combination cars.....	5,330	4,592
33.	Electric Equipment of Cars.....	2,820	2,312
	Total	$54,835	$46,277

246

Account.	Item.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
501.	Engineering Cost	$1,645	$1,388
546.	Law Expenditures	548	463
547.	Interest During Construction	2,758	2,758
548.	Injuries and Damages	548	463
549.	Taxes During Construction	324	324
550.	Administrative Organization Expenses During Construction	823	694
	Total II	$61,481	$52,367
	III. Organization Prior to Construction.		
550.	(*a*) Preliminary Investigation	$500	$500
550.	(*b*) Cost of Selling Securities	3,500	3,500
550.	(*c*) Technical and Legal Expenses	754	754
550.	(*d*) Interest on (*a*), (*b*), and (*c*)	575	575
	Total	$5,329	$5,329
	IV. Working Capital.		
	Materials and Supplies	$750	$750
	Minimum Cash Balance	950	950
	Total IV	$1,700	$1,700
	Total property outside city limits	$69,950	$60,836

Acct.	Description.	Quantity.	Unit.	Rate.	June 30, 1914.	Cost to reproduce new less depreciation.
502.	Right of Way:					
	Private right of way on Jefferson St. running from 19th St. to city limits	.....	.....	.....	$3,200	
	Total Acct. 502				$3,200	$3,200
503.	Other Land Used in Electric Railway Operation:					
	Car barn lot at 14th and Broadway	.....	.....	.....	$4,800	
	Total Acct. 503				$4,800	$4,800
504.	Grading:					
	Excavation and disposal of loose material	28,359	c. y.	0.94	$26,657	
	Curbing—concrete	.....	l. s.	.....	2,520	
	Total Acct. 504				$29,177	$29,177

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
505.	Ballast:					
	Concrete—1-3-6 mix, 6″ below bottom of tie to 3″ above top of the tie	7,317	c. y.	$4.66	$34,097	
	Gravel—6″ below bottom of tie to top of rail	20,182	c. y.	0.94	18,971	
	Total Acct. 505				$53,038	$47,761
248						
506.	Ties:					
	6″ x 8″ x 8′ 0″ White oak seconds	37,345	ea.	$0.57	$21,287	
	6″ x 8″ x 10′ 0″ White oak bridge ties	200	ea.	1.39	278	
	Total Acct. 506				$21,565	$18,546
507.	Rails, Rail Fastenings and Joints:					
	60 lb. low tee rail	960.50	G. T.	$56.70	$54,460	
	79 lb. high tee rail	531.52	G. T.	56.70	30,137	
	Angle bar joints for 60 lb. rail	4,320	ea.	1.51	6,523	

	Angle bar joints for 79 lb. rail	1,235	ea.	2.02	2,495	
	Tie plates	25,720	ea.	0.20	5,144	
	Spikes	315	keg	4.41	1,389	
	Total Acct. 507				$100,148	77,114
508.	Special Work:					
	Hard center switches, 60 lb. rail ...	19	ea.	$138.60	$2,633	
	Hard center mates, 60 lb. rail	19	ea.	113.40	2,155	
	Hard center frogs, 60 lb. rail	20	ea.	63.00	1,260	
	Rail—60 lb. tee	90.16	G. T.	56.70	5,112	
	Hard center switches, 79 lb. rail ...	25	ea.	183.96	4,599	
	Hard center mates, 79 lb. rail	25	ea.	126.00	3,150	
	Hard center frogs, 79 lb. rail	37	ea.	94.50	3,496	
	Hard center crossings, 79 lb. rail ..	1	.....	.....	529	
249						
	Built-up crossings, 79 lb. rail	18	ea.	$277.20	$4,990	
	Rail—79 lb. tee	18.34	G. T.	56.70	1,040	
	Chocks and bolts for curves	8,850	lb.	.044	385	
	Total Acct. 508				$29,349	$21,131
510.	Track and Railway Labor:					
	Labor distributing and spacing ties, laying steel and mixing and placing ballast:					
	Paved track	23,810	l. f.	0.96	$22,858	

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Labor distributing and spacing ties, laying steel and surfacing:					
	Unpaved track	59,155	l. f.	0.24	14,197	
	Extra labor laying curves:					
	Paved track	2,434	l. f.	0.94	2,288	
	Unpaved track	4,850	l. f.	0.24	1,102	
	Labor laying special work, Switches, mates and frogs:					
	Paved track	87	pcs.	34.78	3,026	
	Unpaved track	58	pcs.	18.52	1,074	
	Hard center crossings	1	.....	.....	69	
	Built-up crossings	18	pcs.	37.80	680	
250	Total Acct. 510				45,294	$39,406
511.	Paving:					
	Vitrified brick on ½" sand cushion	15,116	s. y.	$2.07	$31,290	
	Wood block on ½" sand cushion	1,067	s. y.	2.20	2,347	
	Bitulithic—2"—on concrete	4,036	s. y.	1.39	5,610	
	Total Acct. 511				$39,247	$32,182

512.	**Roadway Machinery and Tools:**				
	Acetylene Welding outfit	1	....	.....	$142
	Electric welding outfit	1	....	.....	450
	Miscellaneous tools consisting of picks, shovels, drills, rail benders, bars, etc.	.....	l. s.	.....	205
	Total Acct. 512				$797
					598
515.	**Bridges Trestles and Culverts:**				
	Bridge on Tyler Line 1—100′ span single track steel deck truss and 6—30′ reinforced concrete deck girder spans on reinforced concerte columns with concrete pile footings under two bents.				
251					
	Piles—12″ concrete	200	l. f.	$1.51	$302
	Excavation	28	c. y.	1.26	35
	Backfill	89	c. y.	0.15	13
	Reinforced concrete forms	5,473	s. f.	0.28	1,532
	Reinforcement	7.85	tons	82.00	644
	Concrete—1-2-4 mix	148	c. y.	7.94	1,175
	Surfacing concrete	5,473	s. f.	0.05	274
	Structural steel	12.80	tons	113.50	1,453
	40 lb. guard rail	3.30	G. T.	31.50	104
	Lumber	0.56	MBM	41.00	23
	Anchor bolts	891	lb.	0.047	42

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Single track temporary trestle—3-post bents on mud sills:					
	Excavation	20	c. y.	1.25	25	
	Timber	34.3	MBM	50.40	1,729	
	Bolts	1,427	lb.	0.047	67	
	Removal of temporary trestle	.....	l. s.	.....	250	
	Total Bridge				$7,668	
	Brick culverts containing 31.6 c. y. excavation 4.2 M common brick 100 s. f. centering .341 MBM timber:					
	Brick culverts at 6th and Backman Sts.	1	....	.....	$227	
	Brick culverts at 6th and Norton Sts.	1	....	.....	227	
	Brick culverts at 19th. and Ky. Ave.	1	....	.....	227	
252						
	Concrete culverts:					
	18th and Broadway	37	c. y.	$11.35	$420	
	18th and Jefferson	37	c. y.	11.35	420	

12th and Caldwell	48	c. y.	11.35	545	
13th and Caldwell	64	c. y.	11.35	726	
Total culverts				$2,792	
Total Acct. 515				$10,460	$9,414
516. Crossings, Fences and Signs:					
Miscellaneous signs	.....	l. s.	.....	$90	
Total Acct. 516				$90	$81
519. Poles and Fixtures:					
16.0 miles of single circuit pole line, comprising the following material; installed:					
30′ chestnut poles	306	ea.	$9.75	$2,984	
30′ white cedar poles	182	ea.	9.17	1,669	
30′ red cedar poles	117	ea.	12.20	1,427	
35′ chestnut poles	88	ea.	14.12	1,243	
35′ white cedar poles	58	ea.	12.83	744	
35′ red cedar poles	30	ea.	17.79	534	
40′ chestnut poles	12	ea.	15.95	191	
35′ iron poles	32	ea.	42.76	1,368	
4-pin cross-arms	35	ea.	1.26	44	
1-pin brackets	216	ea.	.41	89	
Insulator pins	251	ea.	.02	5	
Guy anchors	76	ea.	3.80	289	
Bracket arms	10	ea.	4.62	46	
Eyebolts	1,005	ea.	.27	271	

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Spare material:—					
	Chestnut poles 30′	8	ea.	$6.70	$54	
	Bracket arms	4	ea.	3.04	12	
	Total, acct. 519				$10,970	$9,226
521.	Distribution system:					
	16.0 miles of single circuit overhead trolley, comprising the following material; installed:—					
	#2/0 hard drawn trolley wire 84,193 lin. ft.	33,846	lb.	.22	7,446	
	Straight line hangers	769	ea.	.58	446	
	Pull-offs (single)	265	ea.	1.78	472	
	Pull-offs (double)	75	ea.	1.88	141	
	Barn hangers	111	ea.	1.35	150	
	Ears	1,241	ea.	.90	1,117	
	Barn anchors	1	..	.....	1	
	Strain plates	36	ea.	5.74	207	
	Frogs	46	ea.	5.09	234	
	Crossings (rigid)	5	ea.	5.31	27	
	Splice ears (15″)	60	ea.	3.04	182	
	Splice ears (12″)	27	ea.	2.85	77	

	Strain insulators (wood)	2,014	ea.	.73	1,470
	Strain insulators (porcelain)	69	ea.	1.94	134
	Strain insulators (fibre)	23	ea.	3.75	86
	3/8" -7strand guy wire	432,000	ft.	3.82	1,650
	1/4" 7-strand guy wire	477,100	ft.	2.60	1,240
	Lightning arresters	18	ea.	25.84	465
	Section insulators	9	ea.	9.34	84
	Sectionalizing switch	1	..	.....	20
	Trolley trough	900	ft.	.21	189
254	4.0 miles of feeder cable, comprising the following materials, installed:—				
	#4/0 T. B. W. P. stranded copper feeder, 28,123 lin. ft.	22,498	lb.	$.26	$5,850
	#2/0 T. B. W. P. stranded copper feeder, 1,661 lin. ft.	867	lb.	.26	225
	#2/0 feeder taps	2	ea.	4.82	10
	#4/0 feeder taps	19	ea.	7.84	149
	Feeder insulators (glass)	226	ea.	.09	20
	Trimming trees for feeders, etc.	4.5	mi.	28.00	126
	Return feeder, comprising the following material, installed:—				
	#2/0 T. B. W. P. stranded copper feeder (aerial), 1,714 lin. ft.	895	lb.	.26	233
	#4/0 T. B. stranded copper feeder (underground)	520	l. f.	.26	135
	#500,000 c. m. T. B. W. P. stranded copper feeder (aerial), 1091 lin. ft.	2,066	lb.	.26	537

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	16.0 miles of track bounding installed as follows:—					
	Electric weld #4/0 bonds	3,817	ea.	.94	3,588	
	Gas weld #4/0 bonds	529	ea.	.76	402	
	Compressed #4/0 terminal bonds	1,157	ea.	1.47	1,701	
	Cross bonds #4/0 with driven ground	8	ea.	45.20	362	
	Cross bonds #2/0 with driven ground	4	ea.	14.75	59	
255						
	Units of special work bonded	134	ea.	$24.00	$3,216	
	Connections to aerial feeder	2	ea.	90.80	182	
	Spare material:—					
	3/8" 7-strand guy wire	15	100 ft.	2.15	32	
	1/4" 7-strand guy wire	10	100 ft.	.93	9	
	#2/0 round trolley wire (10,600 lin. ft.)	4,258	lb.	.19	909	
	Miscellaneous material	.....	.....	.....	644	
	Total acct. 521				$34,127	$29,349

523. Shops and car houses:

Broadway Car Barn Yard—

Boad fence	4,830	s. f.	.10	483
1″ pine fence	100	l. f.	.16	16
Sidewalk, concrete	36	s. y.	1.13	41
Macadam	800	s. y.	1.00	800
Grass plot	10,000	s. f.	.015	150
Building—				
Excavation	680	c. y.	1.26	857
Blackfill	48	c. y.	0.15	7
Concrete—1-3-6 mix	246	c. y.	6.42	1,579
Forms	3,875	s. f.	0.11	426
Stairs—concrete	200	l. f.	0.315	63
Brick—common	184	M	25.20	4,637
Floor——conder concrete	7,141	s. f.	0.063	450
Lumber, Y. P.	73.2	MEM	41.00	3,001
Siding—corr. asbestos protected metal	6,936	s. f.	0.15	1,040
Sash—wood—double hung	647	s. f.	0.45	311
Roofing—5-ply tar and gravel	19,080	s. f.	0.095	1,813

256

Sheet metal work—

Flashing—Tocan metal	1,060	s. f.	0.157	166
Coping—Toncan metal	300	s. f.	0.157	47
Skylights with 24″ vents	480	s. f.	1.20	576
Gutters—galv. 6″	320	l. f.	0.19	61
Downspouts, galv. 4″	108	l. f.	0.19	21

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Vitrified tile copying 8"	290	l. f.	0.16	46	
	Doors—					
	2" fire sliding	21.7	s. f.	0.69	15	
	2" wood built-up	1.95	s. y.	0.19	92	
	Plastering—cement on metal lath	55.9	s. y.	0.75	42	
	Painting—cold water	4,670	s. y.	0.19	327	
	Painting—lead and oil	187	s. y.	0.19	36	
	Miscellaneous iron work	320	lb.	0.025	8	
	Plumbing fixtures—					
	1 toilet and sink	1	.....	.....	88	
	Slate Partitions	40	s. f.	1.01	40	
	Sprinkler system	262	heads	5.67	1,486	
	Heating	9	coils	l. s.	290	
	Miscellaneous fire protection apparatus	.....	.....	l. s.	105	
	Lighting—exposed conduit outlets	40	.....	14.35	574	
	Total car barn				19,694	$18,709

NOTE.—Boiler is included in Office Building, sprinkler system in Office Building is included in Car Barn.

Office Building—				
Excavation	56	c. y.	$1.26	$71
Backfill	28	c. y.	0.15	4
Brick—common	72.6	M	25.20	1,830
Lumber—Y. P.	6.95	MBM	41.00	285
Floor concrete—1-2-4	40	c. y.	7.94	318
257				
Flooring—2" Y. P.	810	s. f.	$0.05	$40
Screeds—2" x 3"	621	l. f.	0.044	27
Granolithic flooring	1,350	s. f.	0.038	51
Roofing—5-ply tar and gravel	2,260	s. f.	0.095	215
Doors—Std. mill-interior	210	s. f.	0.57	120
Doors—Std. mill-exterior	51	s. f.	0.52	27
Sash, wood, double hung	308	s. f.	0.48	148
Partitions—t. & G.	2,575	s. f.	0.09	232
Painting—lead and oil	394	s. y.	0.19	75
Vitrified tile coping—13"	200	s. f.	0.26	52
Toilet fixtures:				
Toilets	4	ea.	l. s.	246
Basins	5	ea.		
Shower	1	.....	.....	13
Miscellaneous iron work	133	lb.	0.025	3
Slate partitions	132	s. f.	1.01	133
Varnishing	619	s. y.	0.25	155
Downspouts—galv. 4"	12	l. f.	0.19	2
Flashing—Toncan metal	300	s. f.	0.157	47
Lighting, exposed conduit outlets	15	.....	14.40	216

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Heating:					
	60 h. p. hor. boiler	60	h. p.	15.75	945	
	Piping—2"	200	l. f.	0.25	50	
	Radiators—setting	6	ea.	3.64	22	
	Radiation	225	s. f.	0.175	39	
	Total Office Building				$5,366	$5,098
258	Storage Shed, 25' x 12' wood siding, ready roofing, wood floor, one partition	300	s. f.	1.05	315	158
	Oil House, 10' x 12' corrugated iron siding, brick floor	120	s. f.	1.26	151	
	Total, acct. 523				$25,526	$24,101
530.	Passenger and combination cars:					
	28 Passenger cars ready to operate, as follows:—					
	Closed, single truck, double end, steel sheathed, 34' 6" overall					

motor passenger cars, 12 reversible slat cross seats, 4 short slat stationary seats, lift sash, arch roof, 5′ 6″ drop platforms, built-up wind shields, Nos. 21, 22, 23, and 24	4	ea.	$1,933.00	$7,732
Closed, double truck, double end, wood, 44′ 6″ over-all motor passenger car, 16 reversible slat cross seats, 4 short slat seats, lift sash, monitor roof, 4′ 8″ drop platform, built-up wind shields, No. 92....	1	.....	.....	2,441
259				
Closed, double truck, double end, wooden and steel, 41′ 8″ over-all motor passenger car, 18 reversible slat cross seats, 4 short slat stationary seats lift sash, monitor roof, 5′ 2″ drop platforms, built-up wind shields, No. 95	1	.....	.....	$2,342
Semiconvertible, double truck, double end, wooden, 39′ 0″ over-all motor passenger cars, 12 reversible ratten cross seats 4 long stationary, lift sash, monitor roof, 4′ 8″ drop platforms, built-up wind shields, Nos. 1, 2, 3, and 4.....	4	ea.	$2,592	$10,380

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Semiconvertible, single truck, double end part steel body 28′ 0″ over-all motor passenger cars, 12 reversible rattan paneled cross seats, lift, sash, arch, roof, 4′ 8″ drop platforms, built-up wind shields Nos. 40, 42, and 44.....	3	ea.	1,528	$4,584	
260						
	Semiconvertible double truck, double end, wooden, 39′ 0″ over-all motor passenger cars, 2 longitudinal stationary rattan seats, lift sash, monitor roof, 4′ 8″ drop platforms, built-up wind shields, Nos. 101 and 104	2	ea.	$2,240	$4,480	
	Semiconvertible, double truck, double end, wooden, 35′ 6″ over-all motor passenger car, 10 cross reversible rattan seats, 2 long stationary rattan seats, lift sash, monitor roof, 4′ 6″ drop platform, built-up wind shield, Nos. 102 and 103..	2	ea.	1,524	3,048	

Open double truck, double end, wooden, 26-post, 22 reversible slat cross seats, 4 short slat stationary seats, 41′ 0″ over-all motor passenger car, monitor roof, 4′ drop platform, No. 93	1	.....	.....	1,790		
Open, double truck, double end, wooden, 30 post, six slat bench, 10 long slat stationary seats, 52′ 0″ over-all motor passenger car, monitor roof, 3′ 6″ Continuous platforms, No. 94	1	.....	.....	2,740		
261						
Open, double truck, double end, wooden, 12-post, 14-slat bench, 40′ 6″ over-all motor passenger car, monitor roof, 4′ 8″ continuous platform, No. 96	1	.....	.....	1,680		
Open, single truck, double end, wooden, 23′ 6″ over-all trailer cars, 12 reversible slat cross seats, monitor roof, 3′ 6″ continuous platforms, Nos, A. C. D. E, and H..	5	ea.	$840.00	4,200		
Open, single truck, double end, wooden, 20′ 6″ over-all trailer cars, 7 bench, monitor roof, 3′ 6″ continuous platforms, Nos, B. F, and G	3	ea.	630.00	1,890		
Total passenger cars				$47,307	$40,211	

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	28 Equipments of passenger car trucks, ready for service as follows:					
	Brill #21-E, single trucks with 7′-0″ wheel base 33″ C. I. wheels, 4″ axles. Cars No. 21, 22, 23, 24, 40, 42 and 44	7	ea.	$310	$2,170	
	McGuire, single trailer trucks, with 6′ 0″ wheel base, 24″ C. I. wheels, 2½′ axles. Cars No. A, C, D, H and E	5	ea.	280	1,400	
	McGuire, single trailer trucks, with 6′ 0″ wheel base, 30″ C. I. wheels, 2½″ axles. Cars No. B, F and G	3	ea.	240	720	
	McGuire, double trucks, with 4′ 6″ wheel base 30″ C. I. wheels, 4″ axles. Cars No. 92, 93 and 94....	3	pr.	650	1,950	
263	St. Louis #47, double trucks, with 4′-6″ wheel base, 33″ C. I. wheels, 4″ axles. Cars No. 95 and 96..	2	pr.	665	1,330	
	Brill #27-G1, double trucks, with 4′ 6″ wheel base, 33″ C. I. wheels, 4″ axles. Cars No. 1, 2, 3, 4, 101, 102 and 104	7	pr.	$670.00	$4,690	

St. Louis, Maximum Traction, double trucks, with 4' 4" wheel base, 2-33" C. I. wheels and 2-24" C. I. wheels 4" axles. Car No. 103..	1		.....	560
Car trucks, not ready for service as follows:				
St. Louis, #47 double trucks, with 4' 6" wheel base, 33" C. I. wheels 4" axles	2	par.	665.00	1,330
Total Passenger Car Trucks			$14,150	$12,452
Extra and additional equipment parts installed:				
Peacock hand brake equipment for single truck cars	30	sets	$15.00	$450
Peacock hand brake equipment for double truck cars.....	26	sets	20.00	520
Plain incandescent head lights.	4	ea.	13.00	52
Semaphore lense incandescent headlights	44	ea.	13.00	572
Single fare registers	8	ea.	26.00	208
Double fare registers	1	ea.	.....	40
Equipment for fare registers..	5	sets	.....	151
Trolley catchers	32	ea.	$7.00	$224
Folding platform gates	2	ea.	15.00	30

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Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Brill radial street railway couplers	62	ea.	22.00	1,364	
	Block side signs	52	ea.	5.00	260	
	Illuminated block signs	26	ea.	25.00	650	
	Johnson fare boxes	16	ea.	99.00	1,584	
	R. I. C. coasting recorders	16	ea.	116.00	1,856	
	Sanders	4	ea.	28.00	112	
	Consolidated car heaters	32	ea.	10.00	320	
	Johns-Manville car heaters	34	ea.	5.50	187	
	Total Extra and Additional Parts				$8,580	$7,722
	Spare material:					
	4″ axles	16	ea.	$9.00	144	
	33″ C. I. wheels	35	ea.	4.00	140	
	Total Spare Material				$284	284
	Total, Acct. 530				$70,321	$60,669
532.	Service Equipment:					
	Double truck, center operation, motor flat car with operator's cab in center, used as work and line car, 30′ 5″ over bumpers, mounted on St. Louis 4′ 6″ wheel base truck with 4″ axles and 30″ C. I.					

Single truck, double end snowplow and work car, baggage car type, 20′ over bumpers, on McGuire trucks with 7′ 6″ wheel base, 4″ axles and 33″ C. I. wheels.....	1		.....	1,800	1,530
Total, Acct. 532.....				$3,800	$3,230

265

533. Electric Equipment of Cars:

Electrical Equipments installed and ready for service, as follows:

Double equipments of Westinghouse 12A motors with General Electric K10 controllers, M. R. or equivalent circuit breakers, choke coils, resistance and single trolleys	6	ea.	$1,060	$6,360
Ditto except one controller and one trolley	1		.....	940
Ditto except two trolleys.....	1		.....	1,090
Double equipment of General Electric 80 motors with General Electric K10 controllers, M. R. or equivalent, circuit breakers, choke coils, resistance and single trolley	2	ea.	1,270	2,540
Ditto except two trolleys.....	7	ea.	1,300	9,100

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	Double equipment of General Electric 200 A. motors with General Electric K10 controllers, type M. R. or equivalent, circuit breakers, choke coils, resistance and single trolley	4	ea.	1,410	5,640	
266	Double equipment of Westinghouse 3 motors with General Electric K10 controllers, M. R. or equivalent, circuit breakers, choke coils, resistance and two trolleys....	1		.....	$1,215	
	Total, electrical equipments				$26,885	$15,701
	Spare material:					
	General Electric 200 armature..	1		.....	195	
	Westinghouse 3 armature	1		.....	170	
	Westinghouse 12-A armature..	6	ea.	$145	870	
	General Electric 80 armature..	1		.....	188	

	trollers	11	ea.	110	1,210	
	Total, spare material				$2,633	$2,370
	Total Acct. 533				$29,518	$18,071
533.	Shop Equipment:					
	1½ h. p. G. E. motor	1		.....	$58	
	Forge and blower	1		.....	14	
	50-ton wheel press	1		.....	1,050	
	26 " lathe	1		.....	2,050	
	14 " shaper	1		.....	472	
267						
	24" drill press	1	.....	.....	$147	
	16" drill press	1	.....	.....	142	
	Water pump	1	.....	.....	15	
	Water jack	1	.....	.....	44	
	Pit jack	1	.....	.....	42	
	1" coal oil heater	8	ea.	$3.70	30	
	10-ton triple hoist	1	.....	.....	200	
	Swinging cranes (1-ton)	5	ea.	49.00	245	
	¼ h. p. motor	1	.....	.....	42	
	Platform scale	1	.....	.....	15	
	5 h. p. a-c motors	2	ea.	82.00	164	
	9½ h. p. d-c motor	1	.....	.....	196	
	Air compressor	1	.....	.....	115	
	Universal woodworking machine	1	.....	.....	336	
	Grindstone	1	.....	.....	8	

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
	7½ h. p. d-c motor	1	.....	.....	180	
	15 h. p. d-c motor	1	.....	.....	233	
	Ripsaw table	1	.....	.....	163	
	Automatic lowering jacks (15-ton)	4	ea.	14.70	59	
	Car jacks (15-ton)	2	ea.	14.70	29	
	Miscellaneous small tools, comprising hammers, chisels, drills, dies, stocks, vises, etc.	.....	l. s.	.....	389	
268	Total, Acct. 536			.....	$6,438	$4,828
537.	Furniture:					
	Miscellaneous office furniture and fixtures, comprising desks, tables, chairs, cages, lockers, filing equipment, typewriters, calculating machines, etc.	.....	.....	.....	$1,365	
	Total, Acct. 537				$1,365	$1,092
538.	Miscellaneous Equipment:					
	Ford truck—1-ton capacity	1	.....	.....	$395	
	Total, Acct. 538				$395	$296

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
502.	Right of Way:					
	Private right of way on Park and Avondale Lines outside city limits..	8 acres	.....	180.00	$1,440	
	Total, Acct. 502.....				$1,440	$1,440
504.	Grading:					
	Excavation and disposal of loose material	9,950	c. y.	0.94	$9,353	
	Total, Acct. 504.....				$9,353	$9,353
505.	Ballast:					
	Gravel—6″ below bottom of tie to top of rail.....	4,755	c. y.	0.94	$4,470	
	Total, Acct. 505.....				$4,470	$4,470
506.	Ties:					
	6″ x 8″ x 8′ 0″ white oak seconds..	5,375	ea.	0.57	$3,064	
	Total, Acct. 506.....				$3,064	$1,900

Details of Appraisal, Property Outside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
507.	Rails, Rail Fastenings and Joints:					
	60 lb. low tee rail	237.20	G. T.	56.70	$13,449	
	Angle bar joints for 60 lb. rail	936	ea.	1.51	1,413	
	Spikes	43	keg	4.41	190	
270	Total, Acct. 507				$15,052	$11,289
508.	Special Work:					
	Hard center switch—60 lb. rail	1		.....	$139	
	Hard center mate—60 lb. rail	1		.....	113	
	Hard center frog—60 lb. rail	1		.....	63	
	60 lb. low tee rail	19.96	G. T.	56.70	1,132	
	Chocks and bolts	1,700	lb.	.044	75	
	Total, Acct. 508				$1,522	$1,126
510.	Track and Roadway Labor:					
	Labor distributing and spacing ties, laying steel and surfacing	13,395	l. f.	0.24	3,215	
	Extra labor laying curves	1,300	l. f.	0.24	312	
	Labor laying special work	3	pcs.	18.52	56	
	Total, Acct. 510				$3,583	$3,117

519.	Poles and Fixtures:				
	2.2 miles of single circuit pole line comprising the following material; installed:				
	30′ chesnut poles	27	ea.	9.75	$263
	30′ white cedar poles	13	ea.	9.17	199
	30 red cedar poles	14	ea.	12.20	171
	35′ chestnut poles	45	ea.	14.12	635
	35 white cedar poles	21	ea.	12.83	269
	35 red cedar poles	23	ea.	17.79	409
	1—pin brackets	125	ea.	.41	51
	Insulator pins	125	ea.	.02	3
	Guy anchors	40	ea.	3.80	152
	Bracket arms	125	ea.	4.62	578
	Eyebolts	72	ea.	.27	19
	Spare material:				
	Chestnut poles	2	ea.	6.70	13
	Bracket arms	4	ea.	3.04	12
	Total, Acct. 519				$2,694 $2,316

Details of Appraisal, Property Outside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
521.	Distribution System:					
	2.2 miles of single circuit trolley comprising the following material installed:					
	#2/0 hard drawn trolley wire 13,613 lin. ft	5,472	lb.	.22	$1,204	
	Straight line hangers	135	ea.	.58	78	
	Pull-offs (single)	52	ea.	1.78	93	
	Pull-offs (double)	12	ea.	1.88	23	
	Barn hangers	8	ea.	1.35	11	
	Ears	387	ea.	.90	348	
	Strain plates	6	ea.	5.74	34	
	Frogs	4	ea.	5.09	20	
272						
	Crossings (rigid)	4	ea.	5.31	$21	
	Splice cars (12″)	2	ea.	2.85	6	
	Strain insulators (wood)	198	ea.	.73	145	
	⅜″ 7-strand guy wire	100	100 ft.	3.82	382	
	¼″ 7-strand guy wire	54	100 ft.	2.60	140	
	Lightning arresters	2	ea.	25.84	52	
	Section insulator	1	...	...	9	
	Trolley trough	15	ft.	.21	3	

2.2 miles of feeder cable comprising the following material; installed:					
#300,000 c. m. T. B. W. P. stranded copper feeder 5,617 lin. ft.	6,594	lb.	.26	$1,714	
#4/0 feeder taps	7	ea.	7.84	55	
Feeder insulators (glass)	150	ea.	.09	14	
Trimming trees for feeders, etc.	.5	mi.	28.	14	
2.2 miles of track bonding installed as follows:					
Gas weld #4/0 bonds	602	ea.	.76	458	
Compression #4/0 terminal bonds.	362	ea.	1.47	532	
Cross bonds #4/0 with driven ground	2	ea.	45.20	90	
Cross bonds #2/0 with driven ground	1	....	.....	15	
Units of special work bonded	3	ea.	24.00	72	
Spare material:					
3/8" 7-strand guy wire	5	100 ft.	2.15	11	
1/4" 7-strand guy wire	5	100 ft.	.93	5	
#2/0 round trolley wire 10,600 ft.	4,258	lb.	.19	809	
Miscellaneous material				300	
Total, Acct. 521				$6,658	$5,649

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
524.	Stations, Miscellaneous Buildings and Structures:					
	Waiting stations:					
	Near Wallace Park 12′ x 14′ frame structure, open one side, dirt floor	168	s. f.	0.76	$128	
	At Wallace Park Open, 4-post, 8′ x 8′ frame structure, shingle roof, dirt floor	64	s. f.	1.02	65	
	At Country Club 10′ x 10′ open, 4-post, frame structure, dirt floor, ready roofing	100	s. f.	0.96	96	
	Total, Acct. 524				$289	$153
530.	Passenger and Combination Cars:					
	2 Passenger cars ready to operate, as follows:					
	Closed, single truck, double end, steel sheathed, 34′-6″ overall motor passenger cars, 12 reversible slat cross seats, 4 short slat stationary seats,					

lift sash, arch roof, 5'-6" drop platforms, built-up wind shields, Nos. 20 and 25	2	ea.	1,933	$3,866	$3,286
274					
Car trucks, ready for service as follows:					
Brill #21-E, single trucks with 7' 0" wheel base, 33" C. I. wheel, 4" axles, cars No-. 20 and 25	2	ea.	310	$620	$546
Extra and additional equipment parts installed:					
Peacock hand brake equipment for single car trucks	4	ea.	15	60	
Sem-phore lense incandescent headlights	4	ea.	13	52	
Trolley catchers	2	ea.	7	14	
Brill radial street railway couplers	4	ea.	22	88	
Block side signs	4	ea.	5	20	
Illuminated block signs	4	ea.	25	100	
Johnson fare boxes	2	ea.	99	198	
R. I. C. coasting recorders	2	ea.	116	232	
Consolidated car heaters	8	ea.	10	80	
Total, acct. 530				$5,330	$4,592

Details of Appraisal, Property Inside Paducah City Limits—Continued.

Acct.	Description.	Quantity.	Unit.	Rate.	Cost to reproduce new. June 30, 1914.	Cost to reproduce new. Less depreciation.
533.	Electric equipment of cars:					
	Electric equipment installed and ready for service, as follows:					
	Double equipment of General Electric 200 A. motors with General Electric K10 controllers, M. R. or equivalent, circuit breakers, choke coils, resistance and single trolley.	2	ea.	1,410	$2,820	
	Total, acct. 533				$2,820	$2,312

Filed Dec. 20, 1920. Richard J. Martin, Notary Public.

Financial Statement Paducah Railway Co., Covering Six-Cent Fare Period, October 1, 1919-*October* 1, 1920.

I. Calculation based upon value reproduction basis 1914 prices of			$715,520.00
Gross Earnings		$159,461.00	
Operating Expenses & Taxes	$129,590.00		
Depreciation allowance—(4% of $715,520)	28,621.00		
Total Expenses		$158,211.00	
Balance available for return @ rate of 0.17% per annum on $715,520		1,250.00	
II. Calculation based upon cash cost of property of			855,000.00
Gross Earnings		$159,461.00	
Operating Expenses & Taxes	$129,590.00		
Depreciation allowance—(4% of $855,000)	34,200.00		
Total Expenses		163,790.00	
Deficit		4,329.00	
III Calculation based upon value reproduction basis 1920 prices of			$1,439,082.00
Gross Earnings		159,461.00	
Operating Expenses & Taxes	$129,590.00		
Depreciation allowance (4% of $1,439,082)	57,563.00		
Total Expenses		187,153.00	
Deficit		27,692.00	

276 *List of Attorneys, with Addresses.*

For Appellant, City of Paducah:

Roscoe Reed, City Solicitor,
Paducah, Ky.
William V. Eaton,
Paducah, Ky.

For Appellee, Paducah Railway Company:

Charles K. Wheeler,
D. Henry Hughes,
James G. Wheeler,
Paducah, Ky.

277 *Clerk's Certificate.*

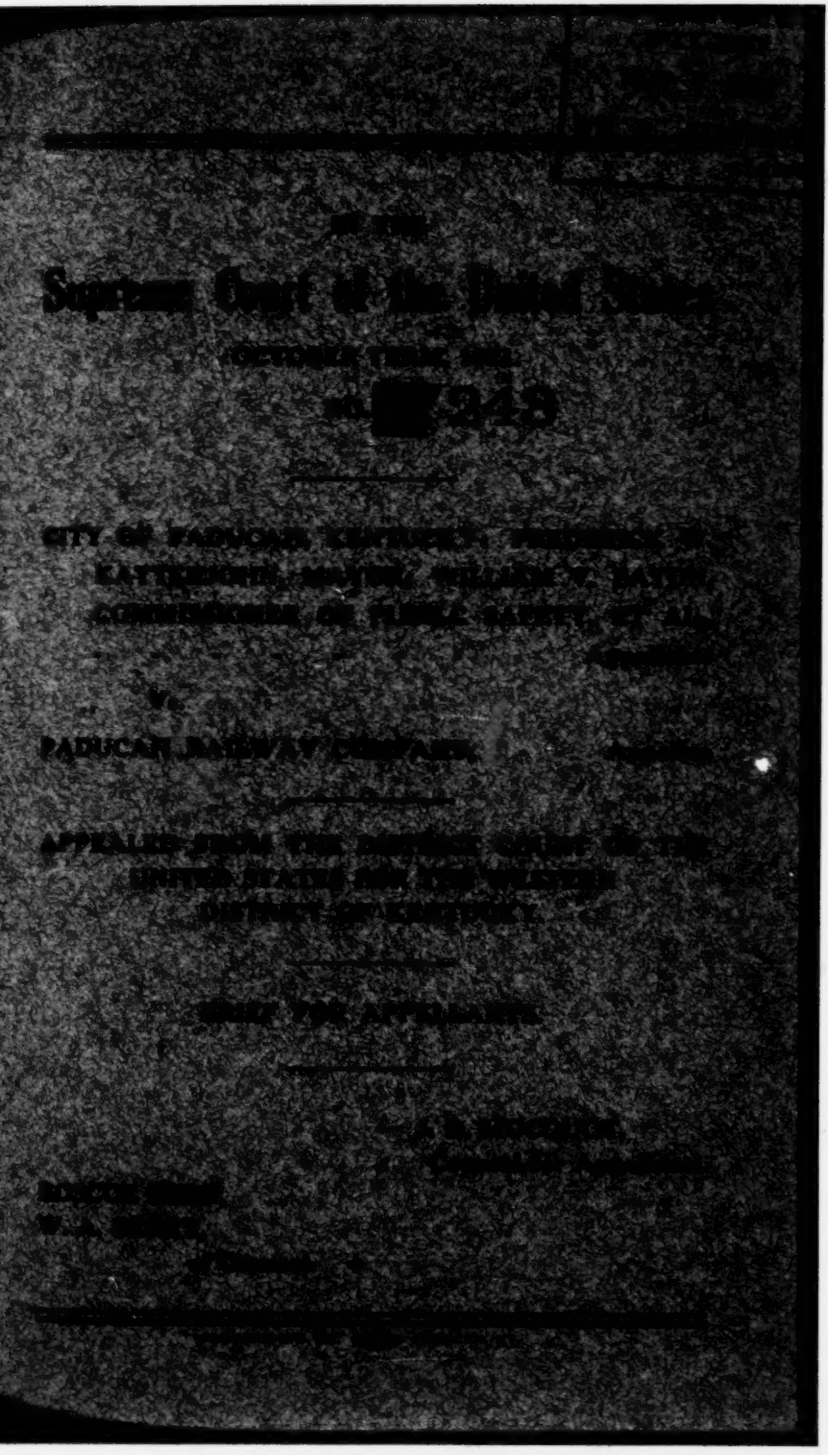
I, A. G. Ronald, Clerk of the District Court of the United States, for the Western District of Kentucky, at Paducah, do hereby certify that the foregoing 276 pages contain a true and correct transcript of the record and proceedings in the case of Paducah Railway Company against City of Paducah, a Municipal Corporation, and Frederick W. Katterjohn, Mayor of Paducah, William V. Eaton, Commissioner of Public Safety, Michael Williams, Commissioner of Public Property, Richard Wynn Tully, Commissioner of Public Finance, James M. Eaker, Commissioner of Public Works. No. 11, copied in accordance with the præcipe of the appellant, to be found on page 95 of this record, except maps of City of Paducah which are omitted by agreement of parties, as the same appears from the original papers now on file in my said office.

Witness my hand and seal of said Court this the 21st day of December, A. D. 1921.

[Seal of District Court of the United States, Wes. Dist. Ky.]

A. G. RONALD,
Clerk U. S. District Court,
Western District of Kentucky,
By W. A. BLACKBURN,
D. C.

Endorsed on cover: File No. 28,636. W. Kentucky D. C. U. S. Term No. 681. City of Paducah, Frederick W. Katterjohn, mayor; William V. Eaton, commissioner of public safety, et al., appellants, vs. Paducah Railway Company. Filed January 7th, 1922. File No. 28,636.



SUBJECT INDEX.

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1. The ordinance in question is not violative of any obligation between the parties as represented by the franchise, or which could possibly be construed as violative of the rights of the Appellee existing by reason of this contract or franchise.. 7

2. The only rights the Appellee, Paducah Railway Company, has, are those granted by the terms and tenor of the franchise, and under those, the ordinance attempted to be enjoined, is not in any wise violative of such rights..... 7

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No. 28636

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

NO. 681.

CITY OF PADUCAH, KENTUCKY: FREDERICK W. KATTERJOHN, MAYOR; WILLIAM V. EATON, COMMISSIONER OF PUBLIC SAFETY, ET AL., - - - - - - - - - - Appellants

Vs. Brief for Appellants.

PADUCAH RAILWAY COMPANY, - - Appellee

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

BRIEF FOR APPELLANTS.

If it may please the Court:

STATEMENT OF THE FACTS.

A bill in equity was filed by the Appellee, Paducah Railway Company, in the District Court of the United States for the Western District of Kentucky, wherein certain allegations were made, and in which said Appellee prayed that the Appellants, the City of Paducah, Ken-

tucky, and its co-defendants, the Mayor and the Board of Commission of such City, each be enjoined and restrained from enforcing the provisions of an ordinance adopted regularly by the said City of Paducah on the 20th day of September, 1920, entitled, "An ordinance fixing the rate of fares to be charged by Electric Street Railways and other persons within the City of Paducah and providing penalties for the violation thereof," and that the appellants be enjoined and restrained from instituting prosecutions against Appellee, its agents and employees for the violations of any section or sections of said ordinance, and from interference in any way with the putting into effect by the Appellee of the schedule of fares that would be reasonable and compensatory; and also praying said Court to adjudge and determine that a 6c fare for adults, including transfers, and one half fare for children over the lines of the Appellee, was not renumerative, and was insufficient to produce such sum as would pay operating expenses, taxes, interest on money invested and care for depreciation and upkeep, and to be confiscatory and violative of the plaintiff's rights, and to further adjudge and determine that a 10c cash fare and discount fare of 7½c where tokens were purchased, and one half fare for children, over Appellee's lines, would be fair and reasonable.

In short, this was a double-barrelled complaint and prayer; first, asking for the enjoining of the Appellants from enforcing the ordinance of September 20, 1920, and then asking the Court, in addition thereto, to render a double judgment, first declaring the rates as fixed by

this ordinance confiscatory and invalid, and to further adjudge that the arbitrary 10c and 7½c token fare, fixed by the Appellee, was reasonable and right.

It will be necessary to go into a history of this controversy to some extent, before the question at issue can be intelligently considered. With this honorable Court's permission, such history will be stated as succinctly as possible.

The Appellee, Paducah Railway Company, is a corporation organized under the laws of the State of Kentucky, and after its organization, did, at a receiver's sale, become the purchaser of and, therefore, the owner of the equipment and railway tracks in the City of Paducah, Kentucky, and adjacent thereto, which had formerly belonged to another corporation known as the Paducah Traction Company. With this purchase it bought all the franchise rights then existing in favor of such Paducah Traction Company, which franchise rights had been procured by purchase previously made from the City of Paducah of such rights. After becoming the purchaser of such rights, a new franchise was offered for sale by the City of Paducah, and bought by Mr. Alfred M. Nichols, on June 6, 1919, for a cash consideration of $250.00. This franchise so bought by Mr. Nichols, was assigned to Stone and Webster on June 6, 1919, and subsequently assigned by Stone and Webster to the Appellee on October 1st, 1919, from which date until now, the Appellee has been operating under this last named franchise above recited, by the terms of which franchise, all the privileges and

all the rights and all the things acquired by the purchase, by the Appellee from the receiver of the Paducah Traction Company ceased and determined in consideration of the grant of the valid franchise bought by Mr. Nichols, as stated, June 6, 1919, and subsequently by assignment becoming the property of the Appellee on October 1st, 1919.

Therefore, if there is any contract, and we say there is, between the Appellee and the City of Paducah, it is wholly represented by the franchise assigned to the Appellee on October 1st, 1919, by Stone and Webster. A copy of this franchise may be found on Page 19 of the record, and covers pages 19, 20, 21, 22, 23, 24 and 25.

Without referring to the other facts of this franchise or contract, which is admitted by all parties as being a valid and binding one, according to its terms and tenor, we respectfully refer the Court to Section 15 of said franchise or contract by the terms of which section 15, it is provided specifically that the fare for one continuous trip is fixed as follows: Cash fare for adults, 6c; children under twelve and over five, half fare, and children under five, accompanied by guardian, nothing. This rate of fares to continue for twelve months from the commencement of operation under the franchise, and at the end of such period, it was provided that the purchaser of the franchise should submit a verified statement of the receipts and expenditures to the Mayor and Commissioners of the City, and then, if it appeared therefrom, after investigation and verification of such report, that

the purchaser had received more than sufficient sum to pay expenses and a reasonable rate of return on the capital invested, such purchaser should repay to the City the difference between the amount necessary for such expenses and a reasonable rate of return upon the invested capital, and the amount actually received; and it was further provided in this same Section 15, that at the expiration of each twelve months during the life of this franchise or contract, to-wit, twenty years, for the purpose of regulating the fares to be charged by purchaser, and to accomplish that purpose and to prevent excessive fares, the purchaser was, at the expiration of each twelve months of the life of the franchise or contract, to submit to the City of Paducah, a verified statement of the receipts and expenditures, and if, from any of such reports, it appeared that the fare as fixed was more than sufficient to provide a reasonable rate of return upon the invested capital, the City of Paducah shall reduce such fare accordingly. This same Section then goes on and says these words: "For the purpose of ascertaining the rate of fare to be charged hereunder, the City may cause said property to be appraised as follows," and then provides how same shall be done.

This franchise or contract between the Appellee and the City of Paducah was accepted and acted under by the Appellee, Paducah Railway Company, from the 1st of October, 1919, during the following year and up to the 1st of October, 1920.

There was never presented to the Mayor or the Board of Commissioners of the City any verified statement of

the receipts and expenditures as provided in Section 15 should be done, although there was a verified statement of the receipts and expenditures presented from them in the early part of September, 1920, but never at the end of the twelve months.

The Appellee threatening to arbitrarily raise the rate on the 1st of October, the Appellants did pass the ordinance complained of in Appellee's bill, which ordinance is set out in full in said Appellee's bill, and will be found on Page 29, marked "Exhibit F," and ends on Page 30 of the record.

The contention of the Appellee, as we understand it, is not that the Appellants did not inherently have the right to pass such an ordinance, but that the enforcement thereof would be confiscatory of the property of the Appellee and would be in violation of the Constitution of the United States, to-wit Section one, of the 14th amendment thereof, and that by enforcement of such an ordinance, the property of the Appellee would be taken without due process of law, and would deny to it the equal protection of the law.

Upon this position taken by the Appellee, the case must stand or fall.

STATEMENT UNDER RULE 21.

The question and only question involved in this controversy, is, whether the rights of Appellee are abridged or interfered with, in view of the Fourteenth Amendment of the Constitution of the United States, by the Appellants, in passing and enforcing the ordinance in question in this case, in view of the terms of the 15th Section of

the contract or franchise sold to Appellee by Appellants.

A. The ordinance referred to will be found on Pages 29, 30 and 31, of the record.

B. The Section 15 of the franchise referred to will be found on Pages 23 and 24 of the record.

This question was raised by the petition of Appellee, Page 3 of the record, and amended petition of the Appellee, Page 41 of the record, and the answer of Appellants, Page 52 of the record, and by the assignment of errors, Pages 68 and 69 of the record.

The error relied upon for reversal in this case is a judgment of the District Court granting the injunction sought, which decree will be found on Pages 62 and 63 of the record.

ARGUMENT.

Now, if it may please this honorable Court, the Appellants contend that this bill in equity will not lie, nor should the relief sought thereunder obtain, for the following reasons: First, because there is nothing which indicates, or from which the conclusion can be drawn, that the provisions of this ordinance sought to be enjoined is violative of any obligation or contract between the parties as represented by the franchise, or which could possibly be construed as violative of the rights of the Appellee existing by reason of this contract or franchise. Second, because the Appellee has no rights, save and except

those which are granted it by the terms and tenor of the franchise, which is the contract between the Appellee and the Appellants.

If the franchise is a contract and creates contractual relation between the parties and the ordinance passed and sought to be enjoined does not violate any provision of this contract, or any right which the Appellee has under same, then no injury or harm can or will come to Appellee by reason of the passage or enforcement of the provisions of the ordinance sought to be enjoined.

The contract under which the Appellee agreed and did act for a year, specifically and directly provides that it shall charge 6c fare for adults and half fare for children between five and twelve, and nothing for children under five accompanied by a guardian. The ordinance complained of provides exactly the same fares. Then there is no difference between the provisions of the ordinance complained of as applicable to the rights of Appellee, and the provisions of the contract existing between the Appellee and the Appellants, and in the absence of any effect of the ordinance being in controvention of the contractual relationship between the Appellee and Appellants, the Appellants take the position that the Appellee has no right to complain.

In the last expression of the Supreme Court of the United States, which was given in the case of Southern Iowa Electrical Company against the City of Chariton, Iowa, and Iowa Electric Company, Appellants, against the

City of Fairfield, Iowa, and Muscatine Lighting Company, Appellants, against the City of Muscatine, Iowa, a decision was handed down on April 11, 1921, and is recorded in the Advanced Sheets of the United States Supreme Court, Advanced Opinion, dated May 15, 1921, pages 464 to 541, which opinion was written by the late lamented Chief Justice White and reported in 255th United States Supreme Court Reports, Page 539, in which Chief Justice White said that two propositions were indisputable:

> "(a) That although the Governmental Agencies having authority to deal with the subject, may fix and enforce reasonable rates to be paid Public Utility Corporations for the service by them rendered, that power does not include the right to fix rates which are so low as to be confiscatory of the property of said corporation.
>
> "(b) That where, however, the Public Service Corporations and the Governmental Agencies dealing with them have power to contract as to rates, and exert that power by fixing by contract rates to govern during a particular time, the enforcement of such rates is controlled by an obligation resulting from the contract, and therefore the question of whether such rates are confiscatory becomes immaterial."

This last expression above recited fits the instant case like a glove. There can be no contention but what the franchise in question in this case, which was passed as an ordinance, bought and sold and became the property of the Appellee, is, was and will be a contract between the Appellee and the Appellants, the City of Pa-

ducah, until the twenty year's limit time, for which it is to run, shall have expired, being a contract, therefore, between the parties voluntarily made and voluntarily entered into. Each of said parties are bound by its terms, and the question of confiscatory rates does not arise in this case, and in the absence of confiscatory rates, then the deprivation of property without due process of law also falls, and it is simply a question as to whether or not the ordinance passed by the City of Paducah, complained of in this action by the Appellee, is in contravention in any way of the rights of the Appellee, under the terms of that contract. If it is in such contravention, then, of course, the enforcement of the ordinance should be enjoined. If it is not, then the Appellee has no cause to quarrel.

The ordinance fixing exactly the same rates to be charged by Street Car Companies within the City limits of the City of Paducah, being exactly the same as those provided for in the contract or franchise, it in no wise violates the rights of the Appellee, and is in no wise violative of Section one, of the Fourteenth Amendment of the Constitution, because as Chief Justice White said in this opinion:

> "The enforcement of such rates is controlled by the obligations resulting from the contract, and therefore, the question of whether such rates are confiscatory becomes immaterial."

As we understand the application of the law attempted to be invoked by the Appellee, upon the ground that the rates are confiscatory, and therefore, a deprivation of the property of the Appellee because of the confiscatory

nature of the rates and they have a right to invoke the protection guaranteed by the Constitution of the United States, is where an ordinance passed by a City fixes rates of a public utility corporation, and those rates so fixed are confiscatory, but there must be an absence of the contractual relationship.

The original idea has been so well stated by Mr. Dillon in his Municipal Corporation Text Book, Volume Three, Fifth Addition, on Pages 1953-54, Section 1229, that we are constrained to quote the section in which this appears:

> "So far as concerns the power of the municipality to attach conditions and restrictions to a grant or consent, no fundamental distinction appears in decisions between a general delegation of authority to a municipality to grant consents or rights to use the streets for railroad, telegraph, telephone and other public purposes, and a simple requirement whether constitutional or statutory that no streets shall be used for these purposes without the consent of the municipality. The power possessed by the State to attach as a condition to the granting of a franchise to a quasi-public corporation, the performance of duties beneficial to the public, may be exercised by the municipality to a delegated power to grant to such a corporation the use of its streets, but when under the Constitution or the Statutes of the State, a railroad company or other public service corporations are forbidden to construct its railroad, telegraph or telephone lines, or other structures in or upon the streets of the City without the consent of the City or specified legal authorities, the municipal authorities are not limited to a single granting or denial of right-of-way, but may prescribe conditions on which the consent is given, and valid conditions

or restrictions accepted by the railroad or other public service corporations are binding upon the parties.

"But in other jurisdictions the principal of estoppal appears to be applied, and it is held that a railroad company or other public service corporation which has accepted the benefit of a grant or consent with a condition attached thereto, is estopped to contest the validity of the condition, either as ultra-vires the municipality, or as beyond its own power and is bound thereby."

And Kentucky is one of these jurisdictions holding to this idea, in the case of the Postal Telegraph Company against the City of Newport, 76th Southwestern Reporter, 159. This same idea of contractual relationship by analogy is held, in the case of Potter M. T. Company against Warren County, 182 Kentucky Reports, Page 840. While it is true that in that case relief was granted because there was no contract, but the Court in fact said that if there had been a contract, it could have been enforced and the street railway company made to continue operations of its lines, although it lost money by so doing; and in that opinion last mentioned, these words were used:

"It is true that when public utility corporations undertake, by virtue of permissive grants made by public authority as this Company did, the performance of a public service, this undertaking when it can be performed under efficient management with fair profit to the owner, carries with it the duty of performing the service in such a way as that the public interest and convenience will be served in a manner contemplated by the terms of the grant and for the time therein specified.

"Under conditions like these, neither of the parties should be permitted to break or alter its terms or conditions to the prejudice of the other, or the public for whose use and benefit the contract was entered into. Both parties must fulfill the purpose of the grant in the manner and in the period of time specified."

Again in this opinion the Court said:

"But in announcing this principle, we wish it to be distinctly understood that its applicability is to be confined to a stated case similar to that presented by the record. We do not mean to say that where there was a contract obligation on the part of the Company to operate its roads for a specified time, that it might, upon a showing that the road could not be operated, even under efficient management, except under a loss, abandon the operation of the road before the term stipulated in the contract had expired.

"It seems to us there is no reason why a contract obligation should not be enforced in this character of the case with the same vigor and fullness as in others where contract obligations are assumed, and the rights of the parties are to be determined by the terms of the contract, and not by the profit or loss that may result in performing its conditions."

Therefore, it being the contention of the Appellants in this case that there is a contract, or was a contract and still is, between the Appellee and the City of Paducah, which contract is the franchise referred to in the petition and pleadings in this case, that the simple question is the application of this contract.

Under Section 15 of the franchise or contract certain fares were to be charged for twelve months. These

fares were charged for twelve months, and there was but one way in which they could be changed, either increased or decreased, and that was by action upon the part of the City of Paducah, by and through its constituted authorities, and that could only be done upon a showing made to it, by a report from the Appellee, and that report must show that the fares fixed in the ordinance was more than enough to pay a reasonable rate of return upon the investment, etc. But the franchise or contract in no way, nor under any possible construction, provides that the fares could be raised or increased, but only provides that they could be lowered or decreased.

If the Court will read carefully Section 15, it will find that when this verified statement of the receipts and expenditures at the end of the twelve months' period, was presented to the Mayor and Board of Commissioners, that if the Mayor and Commissioners of the City, after investigation and verification, found that the purchaser had received (that is the owner of the franchise) more than a sufficient sum to pay expenses and a reasonable rate of return on the capital invested, then the Appellee should repay to the City of Paducah the difference in the amount necessary for its expenses and a reasonable rate of return on the invested money, and the amount actually received.

But there is not a single, solitary thing in this franchise authorizing rates, fixed in Section 15, to be raised at any time, by anybody under any stated case, but when the franchise was bought, and the contract entered into

between the parties, the purchaser, who is now the Appellee, evidently concluded that the fare as fixed by said franchise within the next twenty years thereafter, would be amply sufficient to pay all the expenses and a reasonable rate of return on the money invested, and provided for no increase, but simply provided for a decrease of fares. It is contended, therefore, by the Appellants that this contract lasts for the entire twenty years, and the Appellee must run its cars and charge fares no greater than those fixed by the franchise during that twenty years, whether they lose or do not lose money, and the only way fares can be changed is by decreasing same upon a showing that the Company is getting more than enough to pay expenses and a reasonable rate of return on the invested capital.

And the Appellee, having contracted along these lines with its eyes wide open, accepted this franchise and acted under it, and bound itself to carry the terms of it into effect during the life of the franchise, twenty years.

We contend that the said Appellee is now estopped by having accepted the terms of this contract and having acted under it for twelve months, and they cannot now be heard to say that:

> "Our contract, if enforced, will confiscate our property in violation of the Constitution of the United States, and by reason of that fact we are not making money but losing same; although we made a contract, clean-cut and specifically had, we have the right to arbitrarily raise the rates to what we think would be fair compensation for services rendered."

In other words, it comes back to the original proposition as laid down by Justice White, that the question of confiscation cannot be gone into or considered, where the contract rights existed, but these contract provisions must be carried out between the parties.

It will be admitted by the Appellee that the franchise is a contract between the parties; it will be admitted that the City of Paducah and the Paducah Railway Company are each bound by every part of Section 15; but it will be contended that the true construction of this section is that the fares to be charged were fixed by this contract for only twelve months, and that after that time had expired, the Paducah Railway Company had the arbitrary right to fix the fares at any figure which it wanted to, and having fixed it to suit its own sweet fancy, the City can do nothing whether such fare was fixed at 10c or $10.00 until the end of another twelve months, when it can, under the terms of the 15th Section, or may, be allowed to arouse from its enforced lethargy and ask a showing, and make the Appellee pay back any excess collected by it in the way of fares during the preceding twelve months, over expenses and a reasonable return on the investment.

It is the universal rule applied by Courts in the construction of all contracts in the nature of a franchise, that same being a special privilege bestowed by the government upon individuals and which does not belong to the citizens generally as a matter of common right, if there is any ambiguity in the terms of an ordinance granting a franchise, to construe same always most strongly against

the grantee; and we submit this as a proposition of law, not that there is any ambiguity in Section 15, but we simply make this application here generally.

Looking to this Section 15, if it was meant to be construed as the Appellee would have it construed, why does it fix the fares for twelve months, and why does it say that at the end of the twelve months, if the fares at the rates fixed, accumulate more than enough to pay expenses and a reasonable return, that the Company shall pay the excess back to the City, and then make the same condition to obtain at the end of each subsequent twelve months during the life of the franchise? It is the people's money that is being paid for fares, not the City's money. It is the people who patronize the railway from necessity who have to pay.

The only way to reasonably construe this section is to say that if, at the end of the first twelve months, the receipts are more than enough to pay expenses and a reasonable return on the investment, then the City is to be paid the excess; but certainly it could not be construed that, under this language, the Company can arbitrarily fix a rate to suit itself. The language simply means, by implication, if not specifically, that the rate fixed for the twelve months shall obtain throughout the life of the contract, unless, from the reports made each twelve months, (if they are made and they can be demanded by the City) it is shown that the fares are more than sufficient to pay expenses and a reasonable return on the investment, then the City has a right to reduce the fares for

the benefit of the people; but there is no way for the Railway to get an increase, because they have contracted that right-away and they must abide by their contract. It may suffer by having done so, but, yet, it is a contract solemnly made and entered into, and relief cannot be obtained in the manner attempted.

Therefore, in conclusion, we make the statement that the contract, as stated, exists between these parties to charge no more than six cents' fare for adults and three cents for children, and the same continues throughout the life of the contract, twenty years, and an ordinance making a penalty to charge more is not violative of any of the rights of the Appellee, and its bill in equity should be dismissed, and they be made to live up to the contract which they voluntarily entered into.

Before closing, however, allow us to refer to that part of Appellee's bill which attempts to say that the ordinance should be declared invalid, because a part of Appellee's street railway extends outside of the corporate limits of the City of Paducah, and that this ordinance endeavors to fix rates outside of the jurisdiction of the City. This is not true, because the ordinance simply fixes the rate to be charged in the City of Paducah; for Section 1 of the Ordinance is as follows:

> "That commencing immediately at 12 o'clock midnight, September 30th, 1920, the fares that may be charged or collected for fares within the City of Paducah, and upon any electric street car system on any franchise granted by the City of Paducah, shall be as follows:"

So the ordinance is limited in its effect to the franchise granted by the City, and as the City never granted any right outside of its boundaries, the ordinance does not govern any rights which belong to the Appellee outside of the City of Paducah.

Respectfully submitted,

J. D. MOCQUOT,
Counsel for Appellants.

ROSCOE REED,
W. A. BERRY,
Of Counsel.

Office Supreme Court, U. S.
FILED
JAN 2 1923
WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1921.

NO. 243

CITY OF PADUCAH, KENTUCKY: FREDERICK W. KATTERJOHN, MAYOR; WILLIAM V. EATON, COMMISSIONER OF PUBLIC SAFETY, ET AL., - - - - - - - - - - Appellants

Vs. Brief for Appellee

PADUCAH RAILWAY COMPANY, - - Appellee

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

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Of Counsel.

BERRY PRINTING CO. PADUCAH, KY.

SUBJECT INDEX

FIRST: Appellee could, after the 30th day of September, 1920, establish fares to be charged for transporting passengers, subject to the provisions of the 15th Section of the Ordinance of the City of Paducah, adopted on the 29th day of April, 1919.

SECOND: In the absence of a contract, the City, in exercising its right to fix fares, must consider the right of appellee to receive sufficient revenue to pay operating expenses, interest on invested capital and preserve its property from depreciation.

THIRD: This appeal should be dismissed because no assignment of error was filed as required by the 35th rule of this Court and Section 997 Revised Statutes.

FOURTH: The case should be dismissed because the decision of the District Judge expired by its terms on the 30th day of September, 1921, and the question here is "Moot."

AUTHORITIES CITED

California vs. San Pablo Railroad Company, 149 U. S. Page 308.

Des Moines Gas Company vs. Des Moines, 238 U. S. page 153

Denver vs. Denver Water Works Co., 246 U. S. page 178.

Detroit United Railway Co., vs. Detroit, 248 U. S. page 429.

Knoxville vs. Water Company, 212 U. S. page 1.

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San Diego Land & Town Co., vs. National City, 174 U. S. pages 739-757.

Same vs. Jasper, 189 U..S. pages 439-442.

United States vs. Hamburg-American Co., 239 U. S. page 466.

Vicksburg vs. Vicksburg Water Company, 206 U. S. page 508.

Wells vs. Green, 159 U. S. page 651.

Wilcox vs. Consolidated Gas Co., 212 U. S. page 19.

28636

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1921.

NO. 681.

CITY OF PADUCAH, KENTUCKY: FREDERICK W. KATTERJOHN, MAYOR; WILLIAM V. EATON, COMMISSIONER OF PUBLIC SAFETY, ET AL., - - - - - - - - - - - Appellants

Vs. Brief for Appellee

PADUCAH RAILWAY COMPANY, - - Appellee

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

MAY IT PLEASE THE COURT:

APPELLEE CONTENDS:

FIRST: IT COULD, AFTER THE 30TH DAY OF SEPTEMBER, 1920, ESTABLISH FARES TO BE CHARGED FOR TRANSPORTING PASSENGERS, SUBJECT TO THE PROVISIONS OF THE 15TH SECTION OF THE ORDINANCE OF THE CITY OF PADUCAH, ADOPTED ON THE 29TH OF APRIL, 1919.

SECOND: IN THE ABSENCE OF A CONTRACT THE CITY, IN EXERCISING ITS RIGHT TO FIX FARES, MUST

CONSIDER THE RIGHT OF APPELLEE TO RECEIVE SUFFICIENT REVENUE TO PAY OPERATING EXPENSES INTEREST ON INVESTED CAPITAL AND PRESERVE ITS PROPERTY FROM DEPRECIATION.

THIRD: THIS APPEAL SHOULD BE DISMISSED BECAUSE NO ASSIGNMENT OF ERROR WAS FILED AS REQUIRED BY THE 35TH RULE OF THIS COURT AND SECTION 997 REVISED STATUTES.

FOURTH: THE CASE SHOULD BE DISMISSED BECAUSE THE INJUNCTION OF THE DISTRICT JUDGE EXPIRED BY ITS TERMS ON THE 30TH OF SEPTEMBER, 1921, AND THE QUESTION HERE IS "MOOT."

STATEMENT OF PLEADINGS AND EVIDENCE.

Appellant's statement is not as complete as it should be so we will give a more detailed history of the litigation as gathered from the pleadings and evidence.

It appears that in 1909 the Paducah Traction Company, the predecessor in title to the appellee, operated a system of electric street railways in the City of Paducah over a trackage similar in all respects to that operated by the appellee when this litigation arose. From 1909 to 1918, inclusive, there was an annual deficit resulting from such operation. (R.-567). In 1918 the Paducah Traction Company defaulted on its interest charges on underlying bonds as well as the principal of one bond issue, and on the first of September, 1918, its property went into the hands of a receiver.

On the 30th of September, 1919, the property was sold and purchased by the appellee for Eight Hundred Twenty-five Thousand ($825,000.00) Dollars. On the first day of July, 1918, the franchise under which the Paducah Traction Company was operating was amended by consent and the

fare for hauling passengers was fixed at seven cents for adults, and half fare for children in lieu of the previous fare of Five Cents and Two and one-half Cents (R.7).

The Seven Cent fare for adults and Three and one-half Cent fare for children received by the Company after the ordinance was amended did not yield enough revenue to pay operating expenses and interest charges (R. 7-8).

After appellee purchased the property, and on the 29th day of April, 1919, an Ordinance was passed by the City of Paducah, which appears in full on the 19th and 20th, 21, 22, 23, 24, and 25th pages of the record. The appellee is the owner of the franchise established by said Ordinance. When the Mayor and Commissioners were considering the passage of the Ordinance they were advised that the predecessor in title to appellee had operated under a Five Cent fare; they were likewise advised that the gross receipts received while operating under a Seven Cent fare, failed to produce a sum sufficient to pay operating expenses, taxes and interest upon money invested; however it was ordained by the 15th Section of said Ordinance as follows:

> "The fare for one continuous trip for twelve months from the commencement of operation under this franchise is hereby fixed as follows:
> Cash fare for adults 6c
> Children under 12 and over 5 ..... half fare
> Children under 5 and accompanied by guardian ..... Nothing"

The appellee commenced to operate its cars under the Ordinance on the First of October, 1919, and on the 15th of September, 1920, it was known to appellee from its experience that there would be a deficit resulting from the operation, that is, the gross receipts would not pay operating expenses, taxes, interest on the investment and depreciation, so on the 17th of

September, it addressed a communication to the Mayor and Board fo Commissioners (R. 10-11-12) advising them of the fact. They were also advised that the revenue from the 17th of September, to the 30th of that month was estimated; however, on the 13th day of October, appellee, by an amended bill, stated the exact amount of gross revenue and of operating expenses, and at the same time addressed to the Mayor and Board of Commissioners a statement showing in detail the operating experience of the Company for the twelve months expiring September 30, 1920, (R.-41-42-43-44). When the Mayor and Commissioners received appellee's communication dated September 17th, 1920, they at once proceeded to pass an ordinance fixing a fare for adults at Six Cents, for children under twelve years of age and over five, one-half fare; for children under five years, nothing, and provided that if any Electric Company or Corporation operating an Electric Street Railway in the City under a franchise granted by it should charge or attempt to collect a greater fare for transporting persons over the streets than that provided in said Ordinance, it should be fined not less than ten ($10.00) Dollars nor more than Twenty ($20.00) Dollars for each person transported, that is, for each violation of the terms of the Ordinance; thereupon the appellee, on the 28th day of September, filed its bill, asking that the appellant, City of Paducah, and its officers named, be enjoined and restrained from enforcing the Ordinance because it violated the 14th Amendment of the Constitution of the United States, in that it would take appellee's property without due process of law and denied to it the equal protection of the law; that it was burdensome and oppressive; that the fares as fixed would not yield sufficient revenue to pay operating expenses, taxes, interest on money invested and depreciation (R. 14-15). On the 30th of September appellee appeared before the District Judge of the United States for the Western District of Kentucky and fild notice previously sreved upon appellants, seek-

ng a temporary restraining order against appellants, and after hearing, the order was granted. (R. 34-35).

On the 23rd of October defendants answered. The answer admits the amounts stated in the bill as the experience resulting from the operation of the street cars to be correct, but claimed the actual salaries paid workmen and employes, supplies purchased and taxes paid, are the only operating expenses, and says:

> "This was the total expense and the total expense to the operation of said system as the interest paid by said company on its outstanding bonds is not and was not legitimate charge to be taken into consideration in arriving at a just conclusion as to whether there was or was not a deficit." (R.52).

It is claimed that while A. S. Nichols, the purchaser of the franchise under the Ordinance adopted the 29th of April, 1919, notified the City that he accepted the terms and conditions of the franchise, the appellee has no rights thereunder because it did not notify the City it accepted the terms of the franchise when it became the purchaser of such franchise from Nichols.

It seems a sufficient answer to this contention to say that the Ordinance does not require it to do so. It is also plead in the answer that operating expenses of the Company for the year ending Octobr 1, 1920, was not One Hundred Twenty-nine Thousand Nine Hundred Eighteen ($129,-918.55) Dollars and Fifty-Five Cents, as claimed in the bill, but only Eighty Thousand ($80,000.00) Dollars; that the actual value of the property purchased by appellee was only Four Hundred Sixty-five Thousand ($465,000.00) Dollars, a reasonable return upon money actually invested as fixed in the answer, of Four Hundred Sixty-Five Thousand $465,-000.00) Dollars, instead of Eight Hundred Twenty-five

($825,000.00) Dollars, with an operating expense of Eighty Thousand ($80,000.00) Dollars, shows a profit and not a deficit for the year in question. (R.-55).

Defendants plead the amount for which the Paducah Traction Company assessed the property purchased by appellee. It denies appellee should be permitted to charge a Ten Cent cash fare or a Seven and one half cent fare where tokens are purchased, or that the Ordinance enjoined violates the Fourteenth Section of the Constitution of the United States or any part thereof, and asks that the bill be dismissed.

THE EVIDENCE.

Appellants called no witnesses; appellee, however, introduces several witnesses. It is shown by the witness Hahn (R.-74) that he is an expert civil engineer with wide experience, engaged in valuing Railways, Street Railways, Water works and electric light properties; that he appraised the Brocton Plymouth Street Railway in Massachusetts, the Pensacola Electric Company of Florida, and Columbus Power Company of Georgia, the Bush Terminal of New York and many others. He made a thorough investigation of the properties of appellee and states (R. 77) that the cost of reproduction of the property purchased by appellee on September 1, 1920, would be One Million $1,439,082.00) Dollars; to reproduce it in 1914, say June 30th, would cost Seven Hundred Fifteen Thousand Five Hundred Twenty ($715,520.00) Dollars.

He was asked: "What, in your opinion, is the reasonable market value of the properties of the Paducah Railway Company at this time?" He answered: "The value must lie in some place between the cost to reproduce new as of 1914 prices, pre-war prices and the cost to reproduce new at the present prices. Where it is between there I am not prepared to state

at this moment;it is nearer the 1920 price; it is at least worth Eight Hundred Fifty-five Thousand ($855,000.00) Dollars which is its capitalization I believe."

"Q. The reason you give for not being able to state with some degree of certainty up its value at this date is based entirely upon the market conditions of material and labor; is it or is it not?

A. Yes it is entirely; prices are fluctuating evrey day; some are receding, some are even increasing, no man can predict what the prices will be tomorrow in any commodity."

The witnesses Nash details with particularity the method of raising money for public utilities, especially Street Railways and Electric Light Companies prevailing throughout the Country, and also calculates the method used in determining annual depreciation of such property. He says it is arrived at by estimating the possible life of the property, determining the amount of salvage value remaining after the property ceases to be useful, allowing for certain portions of the property, including real estate, not subject to depreciaiton, and considering all these facts he determines the fair value of the property the amount of earnings that should be set aside yearly for depreciation, so that when the various elements of the property cease to be useful the funds would be in hand available for retiring the capital stock, and he fixes the percentage at Four Per cent. (R.-103-104).

The witness Nichols, who was and is the actual operator of the Company, shows that from the first of October, 1919, to the first of October, 1920, the Company hauled two million, six hundred thirty-six thousand, three hundred thirty-seven (2,636,337) passengers (R.-112); that the total gross receipts was One Hundred Fifty-Nine Thousand ($159,462.00) Four Hundred Sixty-two Dollars, the total operation expenses, not including the taxes, was One Hundred Twenty-three

Thousand Seven Hundred ($123,700.00) Dollars, including taxes, One Hundred Twenty-nine Thousand Five Hundred Ninety ($129,590.00) Dollars; the latter figure however, includes no interest on money invested. (R.-112). That the interest on Eight Hundred Twenty-five Thousand $825,-000.00) Dollars, the value of the property, amounted to Forty-nine Thousand ($49,500.00) Five Hundred Dollars. Figured on a six per cent return upon the actual value of the property. There was an operating deficit of Twenty-five Thousand Five Hundred Nineteen ($25,519.00) Dollars, not including the element of depreciation; that the depreciation amounted to Thirty-four Thousand Six Hundred Eighty-Seven ($34,687.44) Dollars and Forty-four Cents, ora total operating deficit of Sixty Thousand Two Hundred Six ($60,206.44) Dollars and Forty-four Cents, (5.-115); that the Company operated "Under a persistent deficit for a number of years, in point of fact, from the time the present management took the property in 1905." (R.-116). The revenue of the Company must be Two Hundred Thirty-three Thousand Six Hundred Fifty-two ($233,652.00) Dollars in order to pay operating expenses, taxes, six per cent niterest on invested capital and depreciation, and assuming two million, six hundred thirty-six thousand three hundred thirty-seven (2,636,337) passengers, it required a fare of 8.85 Cents to produce the required revenue. (R.-124). John C. Black, Civil Engineer of Chicago, whose principal business is to prepare appraisals of property or to have them prepared under his direction by competent engineers (R.131) made an estimate and appraisal of appellee's property and based upon such estimate, he gives (R.135) the fare that must be charged in order to produce sufficient revenue to pay operating expenses, a fair return upon invested capital, taxes and depreciation, and adds:

> "To pay six per cent upon the total cost of the property to date to the present owners, amounting to Eight Hundred Fifty-five Thousand ($855,000.00) Dollars, approximately would require an adult fare of ap-

proximately 8.11 per cent. To pay Eight per cent upon a cost of Eight Hundred Fifty-five Thousand ($855,000.00) Dollars would require approximately 8.75 per cent for adult fare. All that I have just said respecting fare that would be required to pay these various percentages upon the three bases assigned, is based upon the assumption that the number of passengers would be the same under the required fare as they were under the Six Cent fare which was actually in effect."

ARGUMENT

IT COULD, AFTER THE 30TH DAY OF SEPTEMBER, 1920, ESTABLISH FARES TO BE CHARGED FOR TRANSPORTING PASSENGERS, SUBJECT TO THE PROVISIONS OF THE 15TH SECTION OF THE ORDINANCE OF THE CITY OF PADUCAH, ADOPTED ON THE 29TH DAY OF APRIL, 1919.

Before presenting appellee's conception of the controversy it may not be amiss to refer briefly to some of the suggestions appearing in appellant's brief. Appellee, of course, admits the purchase of and acceptance by it of the ordinance of the 29th day of April, 1919, constituted a contract between appellee and the City; that such contract is binding upon the parties throughout the life of the franchise.

The limitations in the contract control the parties like the other provisions. The statement in the 15th Section of the Ordinance that "The fare for one continuous trip for TWELVE MONTHS from the commencement of operation of this franchise is hereby fixed as follows" was intended to mean and did mean that the fare as fixed was limited to twelve months.

The contract obligation assumed by appellee when it acquired the franchise, was that it would be bound by the provisions of the contract, including the limitation of fare as expressed therein for a period of twelve months.

Appellant argues that "Appellee agreed and did act for a year" under a Six Cent fare . . ." The Ordinance complained of provides exactly the same fares; "Then there is no difference between the provisions of the ordinance complained of . . . . and the provisions of the contract existing between appellee and appellant and . . . appellant takes the position that the appellee has no right to complain," which is tantamount to saying that because appellee agreed to a contract running for twelve months, therefore appellant had the right to extend the provisions of such contract for twenty years with or without the consent of appellee.

A statement of appellant's position is an answer to the argument. The crux of appellant's argument is stated on the 15th and 18th pages of the brief as follows:

> "Is is contended, therefore, by appellants that this contract last for the entire twenty years and appellee must run its cars and charge fares no greater than those fixed by the franchise during the twenty years, whether they lose or do not lose money, and the only way fares can be charged is by decreasing same upon a showing that the Company is getting more than enough to pay expenses and a reasonable rate of return on the invested capital."

Apparently appellant intends to say that nothwitstanding the 15th Section of the Ordinance limits the rate of fare fixed therein to twelve months, such fare is nevertheless operative during the life of the franchise. We are not enlightened as to why such is the case, nor is an effort made to explain the statement made in appellant's brief that "This rate of fare to continue for twelve months from the commencement of operations under the franchise." Appellant then proceeds to cite authority to establish a principal of law not involved in the controversy and not denied by appellee.

When parties fix a rate of fare in a franchise ordinance,

the holder must operate at the fare agreed upon although the operation may be unprofitable or even disastrous.

I.

Section Fifteen falls naturally into three divisions. The first ordains the agreed fare for one year and sets forth the engagement of the purchaser to repay to the City any sum above "Expenses and a reasonable rate of return on the capital invested." The next provision deals with fixing fares and provides that "FOR THE PURPOSE OF REGULATING fares to be charged by th epurchaser."

A report shall be made annually. It is apparent from the reading that the purchaser was expected to fix "the fares to be charged," subject to the regulatory power reserved by the City. This is apparent from the succeeding section, for it is there provided that the City, for the purpose of ascertaining the rate of fare to be charged "May cause said property to be appraised." Then follows the machinery established by the ordinance for ascertaining the value of the property used by the franchise holder in the business. A City names the conditions attached to the use of its streets and has power to fix the rate charged by a Corporation using them. Unless it was the purpose of the City to measurably surrender its right to establish fares, the enactment of the 15th Section of the Ordinance is meaningless. The City would have been within its right, had it proclaimed a rate to endure throughout the life of the franchise, as a matter of fact, such was the custom and usage of Cities until a few years ago. It is apparent from the text of this Section the City realized the establishment of an arbitrary inflexible fare for twenty years was unwise and it therefore. framed the provisions with the view of permitting the operator to so arrange the fare as to insure "Expenses and a reasonable rate of return on the capital invested."

This section establishes what is popularly called "A service at cost." Since the advent of automobiles and other motor driven vehicles, the earnings of street railways and interurbans have been seriously jeopardized, so to offset the loss of revenue resulting from the growth of motor driven vehciles, municipalities have come to realize the Five Cent fare formerly in use, in practically all the Cities for street car lines, is no longer a sufficient revenue producer.

In the last ten or fifteen years a majority of public service franchises embrace the idea set forth in the 15th Section of the Ordinance here. The phraseology may differ but the purpose is the same. The matter aimed at is to permit Public Service Companies, whether Street cars, interurbans, electric light or water companies, to take a sum for the service performed that will pay operating expenses, a reasonable rate of interest on the capital invested and provide for depreciation, and such was the purpose here. The City was not and would not be familiar with the details of the operation of a street car system and would find it difficult to estimate a service at cost fare. The operating Company was expectde to fix a fare because the knowledge at hand enabled it to ascertain at once what fare would produce a service at cost, but the City was not willing to give the Company a free hand in the premises so it was ordained that "for the purpose of ascertaining the rate of fare to be charged," the City might cause the property to be appraised. If it elected to do so, it must appoint an expert appraiser. The operator must do likewise; the two must select a third; the three thus selected to report the value of the property to the City, which in turn, would ascertain the needed rate of fare for the purpose of comparing it with the fare previously proclaimed by the operator, and in that way secure a "service at cost." It was never contemplated that the City would ,at the expiration of ecah year, invoke the "appraisement" feature of the Or-

dinance. It was a power held in reserve, to be exercised in the event it appeared the annual detailed statement of the operator was unsatisfactory or untruthful.

The section, as a whole, appears to mean that the operator should try a six cent fare for twelve months, and if it was a success, the amount received above the service at cost should be paid to the City.

If it failed, the operator should proclaim a fare which might be accepted by the City or if not accepted, suspended until an appraisement could be had, after which the fare would be fixed to yield a service at cost.

Throughout the life of the franchise this method was to be pursued. "The service at cost" expressed, in popular vernacular, the power of the City existing as a matter of substantive law.

II.

IN THE ABSENCE OF A CONTRACT THE CITY, IN EXERCISING ITS RIGHT TO FIX FARES, MUST CONSIDER THE RIGHT OF APPELEE TO RECEIVE SUFFICIENT REVENUE TO PAY OPERATING EXPENSES, INTEREST ON INVESTED CAPITAL AND PRESERVE ITS PROPERTY FROM DEPRECIATION.

Manifestly, appellee was obligated to charge a Six Cent fare for adults and one-hafl fare for children, for a period of twelve months. The ordinance so provides and we shall not attempt to combat by argument the appellant's suggestion that appellee, if he agreed to a six cent fare for twelve months, is compelled to recognize th City's right to continue that fare indefinitely.

In respect to fare, on the first day of October, 1920, the situation was; appellee could proclaim a fare subject to the right of review upon the part of the City (as provided in the ordinance) or the City could do so.

We have attempted to demonstrate that the appellee was vested with that power, but if it be held the City had the right to fix the fare we come back to the central idea embraced in the Section under discussion, which is, that appellee is entitled to a fare which will "Pay expenses and a reasonable rate of return on the capital invested."

We find that expression used more than once in the Fifteenth Section. It appears first in respect to the appellee's engagement to repay the excess received over expenses and a reasonable rate of return on capital invested. It appears again in the portion of the Section having to do with the rate where it is provided that the operator shall annually report the result of its experience to the City, so that a fare may be proclaimed which will "Provide a reasonable rate of return upon the invested capital."

It results, therefore, that if it be held the City was authorized to establish the rate, it must, in the exercise of the power provide a return to appellee, which will pay operating expenses, interest on invested capital and a sum which will take care of depreciation. The City intended to measurably abrogate its authority to proclaim the rate to be charged by appellee for the use of the streets and this it had the right to do, for this Court was held (Vicksburg vs. Vicksburg Water Company, 206 U. S. page 508):

> "That a State may, in matters of proprietary rights, exclude itself from the right to make regulations of this kind, or authorize municipal corporations to do so, when

the power is clearly conferred, has been too frequently declared to admit of dubt."

We are concerned, therefore, to see what is the limitation upon the City in respect to establishing a rate to be charged by the appellee. The burden is upon appellee to show that the ordinance complained of is confiscatory.

> "The question arising is as to the validity of the acts limiting the rates for gas to the prices therein stated. The rule by which to determine the question is pretty well established in this Court. The rates must be plainly unreasonable to the extent that their enforcement would be equivalent to the taking of property for public use without such compensation as under the circumstances is just both to the owner and the public." (Wilcox vs. Consolidated Gas Company, 212 U. S. page 19).

The text is supported by reference to San Diego Land & Town Company vs. National City, 174 U. S. pages 739-757; same against Jasper in 189 U. S. pages 439-442. The proof here is uncontradicted. It appears from the testimony of the witness Nichols that after operating under a Six Cent fare for twelve months, there was a deficit of something like Sixty Thousand ($60,000.00) Dollars. The same witness proves that operating under a Seven Cent fare for twelve months before the Company went into the hands of a receiver, operating expenses were paid, but no interest on investment. It is plead in the bill and not denied, that the experience of the Company from 1906 until 1918, under a Five Cent fare shows a persistent deficit. The proof being the experience of the Company and uncombatted, we present a case where the rate is "Plainly reasonable to the extent that their enforcement would be equivalent to the taking of property for public use without such compensation as under the cricumstances is just."

Where "Sufficient time has passed so that certainty instead of prophecy can be obtained, the certainty would be

preferable to the prophecy." (Knoxville vs. Water Company. 212 U. S. page 1).

Here we have "certainty" and not "prophecy," for appellee, and its predecessor in title exhibits the gross receipts over a series of years, first under a Five Cent fare, next under a Seven Cent fare, then under a Six Cent fare, and in every instance a deficit results.

> "In this situation there can be no question of the Company's right to adequate compensation for the use of its property employed, and necessarily employed, in public service; nor can it be doubted that the property must be valued as property in use." (Denver vs. Denver Union Water Company, 246 U. S. page 178).

The method employed to ascertain the value of the property involved in the Denver Water Company case was the method employed here. In the Denver case it is stated:

> "In estimating the value of the Company's property, he adopted the following method, with the practical consent of the parties; lands and water rights were appraised at their present market values; estimates of the cost of reproducing the structures were made, and, from this cost, allowance for accured deprceiation was deducted so as to determine the reasonable value of the structures in their present condition; and in stimating the cost of repro uction it was assumed that the work would be done under contract after fair competitive bidding, and with reasonable costs for engineering and superintendence in addition to the contract cost."

This method of ascertaining value had been previously approved by the Court in the case of Wilcox vs. Consolidated Gas Company, 212 U. S. page 19, and Des Moines Gas Company vs. Des Moines, 238 U. S. page 153.

The witness, Black, and the witness, Hahn, detailed the methods pursued in valuing appellee's property, and Your

Honors will notice they adopt the methods approved in the Denver and the Des Moines cases.

No value was added for "A going concern," nor was the value fixed at the present cost of reproduction. It was proven it would cost exceeding One Million ($1,000,000.00) Dollars to reproduce the property of appellee at the time the witness testified. It was likewise proven it would cost between Seven and Eight Hundred Thousand Dollars to reproduce it in 1914, and thereupon the value was averaged for the purpose of ascertaining the present value and it was stated that appellee's property was worth at least Eight Hundred Fifty Thousand ($850,000.00) Dollars. In the absence of proof to the contrary the City, in proclaiming a rate, was required to consider appellee's invested capital to be Eight Hundred Fifty Thousand ($850,000.00) Dollars, and to permit it to receive revenue that would pay operating expenses, interest on the invested capital, and in additon thereto, a sufficient amount to take care of depreciation. It was admitted in the Denver case that the Water Company was "entitled to have its property devoted to the public use by supplying the City and County of Denver and its inhabitants with water, remain unimpaired in value so far as its actual use in supplying the City and County of Denver and its inhabitants with water is concerned, and to receive for the service rendered in supplying such water, a reasonable return upon the value of the property devoted to such use and a sufficient amount to protect said property against depreciation and other impairments of value in connection with such use and such water service."

Appellant is bound by this rule and may not fix a fare which controvenes it. The Ordinance enjoined ignores appellee's rights for the City proclaimed a fare which it knew at the time had been tried by appellee disastrously; it knew if appellee operated under the fare as fixed in the enjoined

ordinance, it would be only a question of time when it would go into the hands of a receiver.

You had occasion to consider this question in a street car case (Detroit United Railway Company vs. Detroit, 248 U. S. page 429). Referring to and approving the principle announced in the Denver case, Mr. Justice Hay, speaking for the court said:

> "Within the principles of the Denver case this service could not be required without giving to the Company, thus affording it a reasonable return upon its investment. In the Denver case, we said the very act of regulating the Company's rates was a recognition that its plant must continue as before to serve the public needs. The fact that no term was specified is, under the existing circumstances, as significant of an intent that the service should continue while the need existed as of an intent that it should not be perpetual."

Appellee's case is stronger than either the Denver or the Detroit case. There the franchise had expired; here the franchise was in force with only the rate provisions thereof in question. Appellant contending it had the power to make rates, appellee insisting it had the power to proplain a rate subject to appellant's revisory rights as fixed in the Ordinance but we submit that in either instance the rate proclaimed must conform to the rules of law cited; that a "service at cost" was the thing aimed at when the Ordinance was enacted, and "cost" as used, means operating expenses and a reasonable return upon the invested capital, together with sum sufficient to care for depreciation. The rate proclaimed in the enjoined Ordinance is not sufficient for these purposes. It abundantly appears from the proof that it is not.

III.

THIS APPEAL SHOULD BE DISMISSED BECAUSE NO ASSIGNMENT OF ERROR HAS BEEN FILED AS RE-

QUIRED BY THE 35TH RULE OF THIS COURT AND SECTION 997 REVISED STATUTES.

The error assigned consists in quoting in totiden verbis the decree of the Court rendered on the 25th of June, 1921. We submit an omnium gatherum assignment such as we have here does not comply with the rule. There is no specification of errors relied on; there is no error stated separately or particularly assigned. We know this Court has dealt generously in respect to assignment of errors where error is manifest on the record, but unless the rule is to be set aside entirely, it should at least be partly complied with; the rule requires the appellant to set out separately and particularly each error assigned and intended to be urged.

How are we to know what error appellant relies on when he simply quotes the decree of the Court without reference to any ruling, judgment or matter upon which the decree is based? Our position finds support in the case of Rowe vs. Phelps, 152 U. S. page 87, where the Courts say:

> "This rule requires that the specification 'shall set out separately and particularly each error assigned and intended to be urged,' and there is no such 'plain error not assigned or specified," as calls upon the Court to exercise its option to review the questions involved. It would seem that unless the Statute and rule are to be entirely disregarded, this writ of error must be dismissed."

There is no assignment of error here as contemplated by the rule, and the case should be dismissed.

IV.

THE CASE SHOULD BE DISMISSED BECAUSE THE DECISION OF THE DISTRICT JUDGE EXPIRED BY ITS TERMS ON THE 30TH DAY OF SEPTEMBER, 1921, AND THE QUESTION HERE IS "MOOT."

The opinion of the District Judge (R.-63-67) says: "In our view of the present case, its scope is limited to the rates fixed for the period of time the first day of October, 1920, and the 30th day of September, 1921, both inclusive. On the last named date another report will be due from the plaintiff to the defendant," He also says: "As we view the contract in the present case, it was designed to secure a yearly fixing of rates upon the basis of earnings and to that end certain steps were required to be taken by the defendants as a condition precedent to their action. Are we justified in hoping that on or about the first day of October, 1921, rates may be fixed on the basis o fthe contract or of justice, if possible, for the year beginning October 1st? We say this, because after that date the question as to previous dates may be a "moot" one.

The District Judge is undoubtedly right. The rate proclaimed by either party under the terms of the Ordinance would be effective for only one year. The final decree was entered on the 25th day of June, 1921, and the District Judge was of opinion that the injunction was operative until the 30th of September, 1921 only. The contract between the parties provides for a yearly fixing of rates and if the injunction was properly issued in the first instance, it was by necessity limited to the year wherein the rates were adjudged to be confiscatory.

After the 30th of September, 1921, or, to be accurate, on the succeeding date, October 1st, it was the duty of appellee to furnish the City a verified transcript of its books, showing the gross revenue received, the amount expended for operation, inclduing taxes and balance, if any, remaining, whereupon appellee, irrespective of any injunction issued during the preceding year, might proceed to fix another and

a different rate.

As the fare was to be annually fixed or reviewed, any injunction in respect thereto, of necessity applied only to the fare against which the injunction was leveled for the year in question. In California vs. San Pablo Railroad Company, 149 U. S. page 308, it is written that it is:

> "The duty of this Court, as of every Judicial Tribunal, is limited to determining rights of persons or of property which are actually controverted in the particular case before it. When in determining such rights, it becomes necessary to give an opinion upon a question of law, that opinion may have weight, as a precedent for future decisions, but the Court is not empowered to decide moot questions or abstract propositions or to declare for the Government of future cases prnicipies or rules of law which cannot affect the result as to the thing in issue in the case before it."

The decision of this case by the District Judge or even of this Court, cannot affect the rights of the parties to the contract in respect to fare, for any time after the 30th of September, 1921, for, in the language of the District Judge:

> "The injunction in its scope is limited to the rate fixed or to be fixed for the period between the first day of October, 1920, and the 30th day of September, 1921, both inclusive."

In the case of Wells vs. Green, 159 U. S. page 651, it is stated:

> "The duty of this Court, as of every other judicial Tribunal, is to decide actual controversies by a judgment which can be carried into effect and not to give opinions upon moot questions or abstract propositions or to declare principals or rules of law which cannot affect matters in issue in the case before it. It necessarily follows that when pending an appeal from the judgment of the Lower Court and without any fault of the defendant, an

> event occurs which renders it impossible for this Court, if it should decide the case in favor of the plaintiff to grant him any effectual relief whatever, the Court will not proceed to a formal judgment but will dismiss the appeal."

If the Court finds in favor of the appellant, what relief will be granted? The injunction is not now and has not for months been effective for any purpose. If the case is reversed the Court will be required to give an opinion upon an abstract proposition of law not involved in this controversy (now) and its judgment cannot be carried into effect. The thing sought has been done and cannot be undone by any judicial action. (Richardson vs. McChesney, 218, U. S. page 487).

The question was considered in United States vs. Hamburg-American Company, 239 U. S. page 466, where it is stated:

> "The legal proposition is not in substance controverted, but it is urged in view of the character of the questions and the possibility or probability that on the cessation of war the parties will resume or recreate their asserted illegal combination, we should not decide the controversies in order that by operation of the rule to be established any attempt at renewal of or creation of the combination in the future will be rendered impossible. But this merely upon a prophecy as to future conditions invokes the exercise of judicial power not to decide an existing controversy, but to establish a rule for controlling predicted future conduct contrary to the elementary principal which was thus stated in California vs. San Pablo, etc., Railroad, 149 U. S. pages 308-314: "The duty of this Court, as of every judicial tribunal, is limited to determining rights of persons or of property which are actually controverted in the particular case before it."

If, at this time, a six cent fare will produce revenue sufficient to pay operating expenses, interest on invested capital and care for depreciation, the decision in this case will not determine the matter. The judgment of the Court was that a

Six Cent fare for the year beginning October 1, 1920, was insufficient to pay the sum stated, and was confiscatory, hence the injunction; but it was not adjudged by the Court that after the first day of October, 1921, such fare necessarily was confiscatory or would not produce revenue sufficient for the purposes stated. It follows that measured by the rule announced above, the appellant seeks to have this Court decide a matter that is ended. Whether the injunction granted was rightful or not, it cannot now be set aside since it has expired by its terms. The question is, therefore, moot.

We submit that on the whole case the judgment of the District Court should be affirmed and the case dismissed.

Respectfully submitted,

CHARLES K. WHEELER.

D. H. HUGHES,
JAMES G. WHEELER,
Of Counsel.

I have received two copies of this brief.

J. D. MOCQUOT.

END OF CASE

2. A street railway company has a constitutional right to a reasonable return on the value of its property used in the public service, if it has not contracted the right away. P. 272.
3. A contract between a city and a street railway company considered and *construed* as fixing fares for the first year of operation under it, but as leaving unfettered the rights of the company and of the city, respectively, thereafter to charge and prescribe other fares that are just and reasonable. P. 273.
4. A decree enjoining a city from enforcing street railway fares found to be confiscatory, should be so framed as to protect the city's right to prescribe the same fares if, through change of conditions, they become just and reasonable. P. 275.

Modified and affirmed.

APPEAL from a decree of the District Court permanently enjoining the City from enforcing an ordinance prescribing fares for the Railway Company.

Mr. W. A. Berry, with whom *Mr. J. D. Mocquot* and *Mr. Roscoe Reed* were on the brief, for appellants.

Mr. Charles K. Wheeler, with whom *Mr. D. H. Hughes* and *Mr. James G. Wheeler* were on the brief, for appellee.

MR. JUSTICE BUTLER delivered the opinion of the Court.

The appellee, the Paducah Railway Company, is the owner of an electric street car system in Paducah, Kentucky, and is operating it under a franchise ordinance adopted April 29, 1919. Section XV thereof (printed in the margin)[1] relates to fares to be charged. The company

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[1] SECTION XV.

The fare for one continuous trip for twelve (12) months from the commencement of operation under this franchise is hereby fixed as follows:

Cash fare for adults.....6¢
Children under twelve and over five.....Half fare.
Children under five when accompanied by guardian.....Nothing.

At the end of such period the purchaser, shall submit a verified statement of the receipts and expenditures to the Mayor and Com-

commenced operation under this ordinance October 1, 1919, charging the fare therein specified, six cents for adults, half fare for children under twelve and over five years of age. On September 17, 1920, the company notified the city that it would fail to earn enough to meet operating expenses, taxes, depreciation, and a reasonable rate of return upon its investment by $72,350.10, and furnished the city a statement showing (for eleven months, actual and September estimated) that operating expenses, including depreciation and taxes, exceeded the total revenue by $4,055.86, and that the additional amount required to provide an eight per cent. return on

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missioners of the City of Paducah and if it appear therefrom (after investigation and verification of such report) that the purchaser has received more than a sufficient sum to pay expenses and a reasonable rate of return on the capital invested, such purchaser shall re-pay to the City of Paducah the difference between the amount necessary for such expenses and a reasonable rate of return upon invested capital and the amount actually received.

At the expiration of each twelve months during the life of this franchise, for the purpose of regulating fares to be charged by the purchaser, and to accomplish that purpose, and to prevent excessive fares, the purchaser, shall at the expiration of each twelve months during the life of this franchise submit to the Commissioners of the City of Paducah a verified statement of the receipts and expenditures and if from any of such reports it appears the fare as fixed is more than sufficient to provide a reasonable rate of return upon the invested capital, the City shall reduce such fare accordingly.

For the purpose of ascertaining the rate of fare to be charged hereunder the City may cause said property to be appraised as follows:

The City shall appoint a disinterested street railway expert, and the purchaser shall appoint such expert appraiser for its part, and the two so appointed shall select a third expert appraiser. . . . Said experts shall report in writing to the Mayor and Commissioners of the City of Paducah within three months after their appointment the total valuation of the property owned, controlled or used by the purchaser, in connection with the operation of a street-car system in Paducah, and its vicinity but this franchise shall not be estimated or considered in its value. The cost of such appraisal to be borne equally by the City and the purchaser hereof.

the investment of $854,303 was $72,350.10; that the number of passengers carried was 2,979,654 and the average fare 5.32 cents; that to provide sufficient revenue on the basis of then existing price levels, it would require a cash fare of 13.5 cents, and stated that in the hope that during the ensuing year prices would decline, it was willing to operate for the twelve months beginning October 1, 1920, at a lower fare. It notified the city that, effective on that day, the rates of fare would be: cash fare, 10 cents; tokens, 7.5 cents; half fare, 5 cents. On September 20, 1920, the company, supplementing its earlier communication, requested the city, if dissatisfied with the value of the property as shown in the statement theretofore furnished, to have an appraisal of the property as provided in section XV of the franchise ordinance. On September 21, 1920, claiming that the company was limited to the fares specified in section XV as maximum, the city, without any investigation of the facts reported by the company or any appraisal of the property, passed an ordinance prescribing the same fare and imposing penalties for the violation of the ordinance.[1]

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[1] Section 1. That commencing immediately after 12 o'clock midnight on September 30th, 1920, the fares that may be charged and collected for passage upon any street car within the City of Paducah, and upon any electric street car system operating under any franchise granted by the City of Paducah, shall be as follows:

Cash fare for adults..... 6 cents.
For children under 12 years of age and over 5 years of age. Half fare.
For children under 5 when accompanied by any person who is over 5 years of age..... Nothing.

Section 2. Any person, firm or corporation operating any electric street railway or car within the City of Paducah, or under any franchise granted by the City of Paducah, who shall charge or attempt to collect any greater rate of fares for transportation upon any such electric street car than is provided in Section 1 hereof, shall be guilty of a violation of this ordinance, and each such person, firm or corporation so violating said ordinance shall be fined in any sum not less than Ten ($10.00) Dollars, nor more than Twenty ($20.00) Dollars for each violation thereof.

The company thereupon brought this suit to restrain and enjoin the enforcement of the ordinance on the ground that the rates specified are unremunerative and confiscatory, and that the enforcement of the ordinance would take the company's property without due process of law and deny it equal protection of the laws in violation of the Fourteenth Amendment.

After hearing the parties, the District Court, on September 30, 1920, granted a temporary injunction.

On October 12, 1920, the company furnished a statement of receipts and expenditures for the first twelve months' period in form similar to that submitted September 17, 1920, shortly before the expiration of the year, showing that operating expenses including depreciation and taxes exceeded the total revenue by $4,338.21, and that the additional amount of revenue required to provide an eight per cent. return on the investment as claimed was $72,862.45.

At the trial of the case on the merits, the company offered evidence sufficient to sustain the allegations of the complaint. The city offered no evidence and made no serious contention that the rates fixed in the ordinance complained of were sufficient, but insisted that the franchise ordinance was a contract binding the company to the fares specified in section XV as the maximum never to be exceeded during the twenty-year term.

The District Court held that the franchise fixed rates for the first year only, and final decree was entered enjoining the enforcement of the ordinance.

On this appeal, the city's only contention is that, under the franchise, the company has no right at any time to have fares in excess of those specified in that section, and because of the contract, it may not invoke constitutional protection against the enforcement of the specified rates, even if shown to be too low to yield a reasonable return.

Before considering the language, it is appropriate to take note of the situation existing at the time the passage of the franchise was being considered. The plaintiff's predecessor, the Paducah Traction Company, had operated the system for many years. Until July 1, 1918, there was a five-cent fare. The city and company agreed upon a fare of seven cents to commence on that date. On September 1, 1918, a receiver was appointed and that fare continued in force until October 1, 1919, the date of the commencement of the term of the present franchise. The District Judge in his opinion on granting the motion for a temporary injunction said: "The predecessor of the plaintiff had failed to accomplish either an adequate transportation system for the city or the making of anything resembling profits for itself." Operating expenses greatly increased between 1914 and the adoption of the franchise ordinance.

That the city had power under its charter to prescribe just and reasonable fares from time to time was stated by counsel on the argument and is assumed. The surrender of this power or any part of it is a very grave act; authority to make it must be plain, and the intention so to do must clearly and unmistakably appear. *Home Telephone & Telegraph Co.* v. *Los Angeles*, 211 U. S. 265, 273, and cases there cited.

The company was entitled to just compensation, i. e., a reasonable return on the value of its property used in the public service, and unless contracted away, that right is protected by constitutional safeguards which may not be overridden by legislative enactment or considerations of public policy. *Southern Iowa Electric Co.* v. *City of Chariton*, 255 U. S. 539, 542, and cases there cited; *San Antonio* v. *San Antonio Public Service Co.*, 255 U. S. 547.

On the argument, it was stated by counsel that the city and company have power to contract as to rates and we so assume. If the franchise here amounts to a contract

binding the company to the fare stated therein as a maximum, as claimed by the city, for the whole franchise term of twenty years, it cannot complain, and there is no ground for relief; and the question whether such rates are too low to give a reasonable return or sufficient is immaterial. *Southern Iowa Electric Co.* v. *City of Chariton, supra,* 543; *San Antonio* v. *San Antonio Public Service Co., supra.*

In the construction of section XV, regard properly may be had to the facts, the situation of the parties at the time of the adoption of the ordinance and to their respective powers and rights liable to be effected by the franchise.

The first clause is as follows:

"The fare for one continuous trip for twelve (12) months from the commencement of operation under this franchise is hereby fixed as follows:

Cash fare for adults..... 6¢
Children under twelve and over five..... Half fare
Children under five when accompanied by guardian..... Nothing."

By this provision a definite fare for a specified period is fixed. There is nothing indicating any intention that the fares are to continue beyond the twelve months or that they are to be taken as maximum and not to be exceeded after the expiration of that period.

The second clause is as follows:

"At the end of such period the purchaser, shall submit a verified statement of the receipts and expenditures to the Mayor and Commissioners of the City of Paducah and if it appear therefrom (after investigation and verification of such report) that the purchaser has received more than a sufficient sum to pay expenses and a reasonable rate of return on the capital invested, such purchaser shall re-pay to the City of Paducah the difference between the amount necessary for such expenses and a

reasonable rate of return upon invested capital and the amount actually received."

The purpose of this is plain. The parties here provided for payment to the city by the company of any excess that might result from possible decline of operating expenses or other causes. There is no support here for the city's contention that the fares specified in the section were fixed as the permanent maximum fares for the whole period.

The third clause, commencing the second paragraph of the section, is as follows:

"At the expiration of each twelve months during the life of this franchise, for the purpose of regulating fares to be charged by the purchaser, and to accomplish that purpose, and to prevent excessive fares, the purchaser, shall at the expiration of each twelve months during the life of this franchise submit to the Commissioners of the City of Paducah a verified statement of the receipts and expenditures and if from any of such reports it appears the fare as fixed is more than sufficient to provide a reasonable rate of return upon the invested capital, the City shall reduce such fare accordingly."

The reports required are for the purpose of regulating fares, and were intended to furnish the city facts in aid of the exercise of its power to prescribe just and reasonable fares and to prevent excessive fares; and by this provision there is evidenced a definite understanding that, if in any twelve months' period the revenue yielded by the fares established and in effect for that period, is more than sufficient, as defined in the ordinance, the city will reduce the fares accordingly. There is nothing here to indicate an intention that the fare prescribed in the first clause shall be deemed maximum for the term of the franchise.

The third paragraph commences with the following language: "For the purpose of ascertaining the rate of fare to be charged hereunder the City may cause said

property to be appraised as follows:" The remaining part of the section relates to the valuation. It gives the city authority to require an appraisal of property to be made in the manner specified and imposes upon the company one-half of the expense thereof. This is a further aid to the exercise of the city's power to prescribe just and reasonable fares.

The conclusions to be drawn as to the matter in controversy are obvious. The parties agreed to and were bound to the specified fares for the first twelve months. These fares were not agreed to be maximum for any other part of the franchise term. The right of the company thereafter to have fares sufficient to provide a reasonable rate of return upon its invested capital was not contracted away. The power and duty of the city thereafter to prescribe fares that are just and reasonable was not contracted away; it was definitely understood that, if from any of such reports it appears that "the fare as fixed" (meaning, as established and in effect) was excessive, the city will reduce such fare accordingly.

We have examined the record and are satisfied that the fares prescribed by the ordinance of September 21, 1920, were shown to be too low under the conditions existing at the time of the trial, and that the company is entitled to the injunction.

The decree entered is general in form and is not limited as to time. The terms of the ordinance prescribing the fare in question are general and fix no time limit. It is obvious that conditions may have so changed or hereafter may so change that these or even lower fares may be just and reasonable. The decree appealed from should be modified to safeguard the right of the city under its charter and the franchise properly to exercise its power to prescribe just and reasonable fares.

The decree is modified in accordance with this opinion, and as so modified is affirmed.

CITY OF PADUCAH ET AL. *v.* PADUCAH RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

No. 243. Argued January 18, 1923.—Decided February 19, 1923.

1. A city with power to fix the fares chargeable by street railway companies will not be adjudged to have surrendered any part of it unless plainly authorized and unmistakably intending to do so. P. 272.